

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

THE NORTHEAST OHIO COALITION)
FOR THE HOMELESS, et al.,)

Plaintiffs,)

vs.)

CASE NO. 2:06-CV-00896

JON HUSTED, in his official)
capacity as Secretary of)
State of Ohio, et al.,)

Defendants.)

TRANSCRIPT OF BENCH TRIAL - VOLUME 6

BEFORE THE HONORABLE ALGENON L. MARBLEY, JUDGE

WEDNESDAY, MARCH 23, 2016; 8:30 a.M.

COLUMBUS, OHIO

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VOLUME 6

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(In Columbus, Franklin County, Ohio, Wednesday, March 23, 2016, 8:30 a.m., in open court.)

THE COURT: Good morning, everyone.

Mr. Keller, are you ready to proceed with your cross?

MR. KELLER: Yes, Your Honor.

- - -

JEFFREY TIMBERLAKE,

HAVING BEEN PREVIOUSLY DULY SWORN, FURTHER TESTIFIED AS
FOLLOWS:

CROSS-EXAMINATION

BY MR. KELLER:

Q. Good morning, Dr. Timberlake.

A. Good morning.

Q. When we left off yesterday, we were on Plaintiffs' Exhibit P1194, on page PTF212. Will you let me know when you're there?

A. Yes.

Q. And I will cut directly to the chase. Are you aware that there are math errors in the 2008 and 2010 percentage columns for ballots rejected?

A. When you made me aware of that yesterday, I went and double-checked. And, yes, there are some errors.

Q. I'd like you to turn two pages, now, to your Table 7 on page PTF-214, or 58, of that report.

A. Yes.

1 Q. And are you aware that the number of ballots you're
2 reporting as rejected for 2014 is about 500 higher than what
3 were reported to the Secretary?

4 A. That, I am not aware of. And I didn't -- so I didn't
5 double-check that. I could double-check it, you know, at some
6 point. But that -- that, I was not aware of.

7 Q. But you don't have any reason to doubt the Secretary's
8 numbers, do you?

9 A. Only if I were to -- I would want to see the number and
10 then see what I did to calculate it and if there was some
11 differences in the data that I had, you know, whether there was
12 a calculation error, whether there was just a difference in the
13 data that I had versus what the Secretary has.

14 Q. Okay. All right. I'd just like to speak to you, now
15 more generally, about the Calculus of Voting. I know you had
16 talked about how you're familiar with the broader category
17 of -- I believe it's rational choice theory?

18 A. That's correct.

19 Q. And Calculus of Voting is a subset of that theory,
20 correct?

21 A. That's the way I think of it, yes.

22 Q. But you've never taught a course specifically on the
23 Calculus of Voting, correct?

24 A. Correct.

25 Q. You've never written a paper specifically on the

1 Calculus of Voting, correct?

2 A. That's correct.

3 Q. And you've never used the Calculus of Voting prior to
4 your work in these cases, correct?

5 A. Correct.

6 Q. And am I right that you don't know enough about the
7 specific Calculus of Voting theory to tell me whether there is
8 a standard set or list, things political scientists would
9 consider in evaluating voting costs?

10 A. I would be surprised if there were a standard set. But
11 if there were, I don't think that I could list them. So, I
12 could speculate on what I think they would be, but I don't
13 think that I would be able to report what the average political
14 scientist would include in the Calculus of Voting.

15 Q. All right. I want to walk you through some Calculus of
16 Voting hypotheticals. And for each of them, I'm going to give
17 you two states, State A and State B. And I want you to assume
18 that, other than the specific differences I describe, there are
19 no other differences in the voting systems of those states. Do
20 you understand the scenario I'm setting up?

21 A. Yes.

22 Q. All right. And the ultimate question is going to be the
23 same each time: Which state system, on the whole, imposes a
24 lower voting cost under the Calculus of Voting? Do you
25 understand?

1 A. Yes.

2 Q. All right. So, for the first scenario, State A does not
3 allow absentee voting in person without an excuse, whereas
4 State B allows no-excuse absentee voting in person for all
5 voters. Which state has the lower cost?

6 A. State B would in that scenario.

7 Q. For the second one, State A does not allow absentee
8 voting by mail without an excuse, whereas State B does allow
9 absentee voting by mail without an excuse?

10 A. State B would have the lower cost in that scenario.

11 Q. And for the third scenario, State A requires all voters
12 to provide a government-issued photo identification with
13 voting, whereas State B requires all voters to provide some
14 form of identification but allows options, including but not
15 limited to the photo ID option?

16 A. State B would have the lower cost, according to the
17 Calculus of Voting.

18 Q. Am I right in thinking that, under the Calculus of
19 Voting, the more voting options a person has, the lower the
20 cost?

21 A. That's correct, because they would have a wider variety
22 of ways of voting. And that would reduce the cost of any one
23 method.

24 Q. And are you aware that Ohio voters all get to choose
25 between Election Day voting, early in-person voting, and early

1 voting by mail?

2 A. I am aware, yes.

3 Q. So they can choose whatever option they think imposes
4 the lowest cost on them, correct?

5 A. That may or may not be why they choose those options.
6 But they do have options, yes.

7 Q. And to make sure I'm clear, if they feel like one of
8 these options imposes too many costs based on their scenario,
9 they can choose a different one?

10 A. According to the Calculus of Voting, which does focus
11 very much on cost, yes.

12 Q. I would like to talk to you a little bit about your
13 Senate Factor Five analysis. Am I correct that you did not --
14 in your September report, you didn't conduct any analysis on
15 whether the inequalities that you highlighted have actually
16 affected voter turnout?

17 A. That's correct.

18 Q. And so your report doesn't actually include any analysis
19 linking the Senate factor -- five factors to any decrease in
20 voter participation, correct?

21 A. Correct.

22 Q. Would you concede that minority turnout would at least
23 be one thing you would want to look at in understanding whether
24 socioeconomic disparities have actually hindered minority
25 participation in the voting process?

1 A. Well, let me start by saying that my understanding of
2 the Senate factors was less that it was a call to identify
3 specific factors that directly prohibit minorities or another
4 protected group from voting, but, rather, the context in which
5 voters vote. And, then, in terms of turnout, this is where I
6 depart a little bit from the Calculus of Voting framework,
7 because there are an awful lot of other things that factor into
8 a person's actual voting behavior than simply their own
9 personal socioeconomic characteristics. But I would not be --
10 in general, I don't think it would be unreasonable to look at
11 turnout as something that one might be interested in.

12 Q. So, to go back to my question, if you did want to try
13 and see if there is a link between socioeconomic disparities
14 and whether those have hindered minority-voter participation,
15 minority turnout is something you might want to look at?

16 A. Yes, I would concede that.

17 Q. And, similarly, your discussion within your Senate
18 Factor Five analysis does not include any discussion of African
19 American or minority turnout in recent elections in Ohio,
20 correct?

21 A. I think that's correct.

22 Q. I'd like to have you turn to page 38 of your September
23 report. And that is going to be PTF194.

24 A. Yes.

25 Q. Here, you include the Subsection C on voter ID laws?

1 A. Yes.

2 Q. And in that first sentence, you talk about how, in 2006,
3 Ohio passed an ID system where voters provide their name,
4 current address, and some form of identification, correct?

5 A. Yes.

6 Q. And that was 2006, correct? So, before the challenged
7 laws?

8 A. Correct.

9 Q. Now, in that next sentence, you -- and I'm going to read
10 the first part of the sentence -- you use the phrase "Recent
11 statistical analyses demonstrate that states such as Ohio
12 passing restrictive voter ID laws ..."

13 Did I read that portion of the sentence correct?

14 A. Yes.

15 Q. And, now, am I right in thinking you haven't actually
16 done anything to evaluate whether Ohio's identification laws
17 are restrictive in comparison with other states?

18 A. That's correct.

19 Q. For example, you didn't study any other states voter
20 identification laws, correct?

21 A. Correct.

22 Q. And is it fair to say, then, if I'd asked you to put
23 Ohio on a continuum of least restrictive states to most
24 restrictive, you wouldn't know where it fell?

25 A. That's probably correct, yes.

1 Q. So, would you concede, then, to the extent this sentence
2 suggests you're making any determination about the
3 restrictiveness of Ohio ID laws, that's an improper reading of
4 the sentence?

5 A. I think that, if I had had the chance to write the
6 sentence over again, I think I would just scratch the term
7 "such as Ohio," because I think that Ohio is clearly a state.
8 So it's kind of redundant.

9 So the findings from the research are that states
10 passing -- that there's a correlation between the passage of
11 restrictive voter ID laws and the variables that are mentioned
12 in the sentence. So "such as Ohio," in some sense, is kind of
13 extraneous in that sentence.

14 Q. And that research you're citing in that sentence is
15 national research, correct?

16 A. Yes. I'm sorry. Yes.

17 THE COURT: Could I have a side-bar for a moment?

18 (Thereupon, the following proceeding was held at side-bar.)

19 THE COURT: All right. Here is my question, as the
20 finder of fact. And, you know, under -- Would somebody get
21 that page -- Never mind. I can get it.

22 The sentence reads -- I think this is the same sentence,
23 isn't it? "Recent statistical analyses demonstrate that states
24 such as Ohio passing restrictive voter ID laws over the last
25 six to seven years are those that, one, have higher

1 minority-population representation and, two, that had higher
2 minority and low-income voter turnout in 2008." Is that the
3 sentence?

4 MR. KELLER: That is the sentence, Your Honor.

5 THE COURT: Okay. Would you read back Mr. Keller's
6 question?

7 (The last question was read by the court reporter.)

8 THE COURT: Here is my concern: Under 106, when you
9 read half the sentence and -- you read half the sentence in the
10 record -- did you intend just to read half the sentence, and
11 then ask the question about half the sentence?

12 MR. KELLER: I believe -- Sorry. I believe, in my
13 phrasing of the sentence, it was very clear that I said this
14 portion of the sentence. I'm happy to read the rest into the
15 record, though. That's fine.

16 THE COURT: Because, as a fact-finder, I'm not going
17 to read half that sentence.

18 MR. KELLER: No, I understand.

19 THE COURT: But before I want to ask you about it, I
20 want to make sure that I'm not taking something out of context.
21 But it would help me if I knew what -- If you're going to
22 extract from this witness what he knows about this sentence, I
23 want to know what he knows about the entire sentence.

24 MR. KELLER: Absolutely.

25 THE COURT: And not because -- Half the sentence

1 doesn't mean anything, because that's not what the sentence
2 says, because it's just half. So I don't want you to leave him
3 resting on half of a sentence. I want the whole sentence.

4 MR. KELLER: Okay.

5 THE COURT: And you have the advantage of me, acting
6 as a juror, telling you this is not what I need. I don't need
7 to know what half the sentence means because, if I take
8 something -- if I take half the sentence, I may take it out of
9 context. If I take the whole sentence and you cross-examine
10 him on the whole sentence, that will be more beneficial to the
11 Court as the fact-finder.

12 MR. KELLER: Absolutely, Your Honor.

13 THE COURT: All right.

14 (The following proceedings were had in open court.)

15 THE COURT: Mr. Keller, please continue.

16 BY MR. KELLER:

17 Q. Dr. Timberlake, on the whole page, I want to make sure
18 we have that full sentence in the record that we were talking
19 about. It reads: "Recent statistical analyses demonstrate
20 that states such as Ohio passing restrictive voter ID laws over
21 the last six to seven years are those that, one, have higher
22 minority-population representation and, two, that had a higher
23 minority and low-income voter turnout in 2008." Did I read
24 that sentence correctly?

25 A. I trust that you did, but I closed the pages. Could you

1 tell me what page we're on again? I'm sorry.

2 Q. I'm sorry.

3 THE COURT: 194.

4 BY MR. KELLER:

5 Q. PTF194.

6 A. Okay.

7 Yes.

8 Q. And you were saying that, if you had that sentence to
9 write over again, you would take the "such as Ohio" out?

10 A. Right. As I read it now, it seems extraneous, because
11 Ohio is a state. So it seems fine just to say "states."

12 So, there's a correlation across states.

13 Q. And the research you're citing in that sentence did
14 national studies, correct?

15 A. I think that's correct, yes.

16 Q. And so they weren't just focusing on Ohio?

17 A. That is correct.

18 Q. And you haven't done any study of Ohio's restrictiveness
19 in comparison to other states?

20 A. That's correct.

21 Q. And you wouldn't say that all laws that require some
22 form of identification are restrictive, would you?

23 A. No, I would not say that.

24 Q. And if a state were to provide a number of
25 identification options, that would make it less restrictive in

1 comparison to a state that provides fewer, correct?

2 A. Yes. That's similar to the hypothetical you raised
3 before.

4 Q. All right. I'd like to have you turn now to page 41.
5 So PTF197.

6 A. Yes.

7 Q. And in this subsection, C, you go over -- you provide
8 five examples of racial appeals in Ohio, correct?

9 A. Yes.

10 Q. And these were five examples that you took from -- I'm
11 sure I'm going to butcher this pronunciation -- Dr. Roscigno's
12 report?

13 A. Roscigno, yes. And, yes, that is where the examples
14 came from.

15 Q. You'd admit -- Let's say, since 2000, you would admit
16 that there has been a large number of political campaigns in
17 Ohio, correct?

18 A. Yes.

19 Q. And is it also fair to say that, in that time frame,
20 there has been a large number of political rallies in Ohio?

21 A. Yes.

22 Q. And your analysis of racial appeals in this section
23 isn't meant as a comprehensive analysis of political campaigns
24 in Ohio?

25 A. No.

1 Q. Or political rallies in Ohio?

2 A. No.

3 Q. I'd like to have you turn now to page 45.

4 THE COURT: PTF201, for the record.

5 BY MR. KELLER:

6 Q. And in Subsection D, you're focusing on Senate Factor
7 Seven with regard to minority representation?

8 A. Yes.

9 Q. Am I right in this section you are including information
10 from the 19th Century?

11 A. Yes. I think Table 3 discusses the number of African
12 Americans ever elected. So, it's not totally clear what the
13 time frame is, but it's meant to be since the position was
14 available in the State of Ohio.

15 Q. But is there information that's included in your tables
16 that goes back to the 1800s?

17 A. Yes.

18 Q. Would you concede that in a study about the impact of a
19 recent election law on the success of minorities in reaching
20 public office, data from recent years would be more important
21 than data from the 19th Century?

22 A. To be honest, I don't know how courts apply this factor
23 when considering the context in which politics takes place in a
24 given jurisdiction. So, if a court were trying to figure out
25 the specific impact of a specific law at the current moment,

1 then that -- your question makes sense, or the implication of
2 your question makes sense. If the Court was trying to figure
3 out the, sort of, broader historical context in a state, then
4 it seems like the historical context would make sense. But I
5 simply don't know how courts apply this particular factor in
6 this case, or in any case, really.

7 Q. On that same PTF201, if you look towards the -- if you
8 look on the last paragraph, the first sentence, you do concede
9 that Ohio has made significant progress, when it comes to
10 minority representation, at State and federal levels,
11 historically, and especially since the 1960s. Did I read that
12 correctly?

13 A. Yes.

14 Q. Let's turn to Table 3 in that section. So that's going
15 to be on the next page, PTF202.

16 A. Yes.

17 Q. And, in this table, you didn't include any column
18 showing the number of African Americans who have run for any of
19 these offices, correct?

20 A. That's correct.

21 Q. So the table doesn't include any type of success ratio,
22 correct?

23 A. Correct.

24 Q. I'd like to have you jump to page 49. So that's going
25 to be PTF205. This is your Senate Factor Nine analysis,

1 correct?

2 A. Yes.

3 Q. And that deals with the justifications for -- potential
4 justifications for the law?

5 A. Yes.

6 Q. You wrote this in September, before you knew about the
7 NEOCH case, correct?

8 A. Correct.

9 Q. And you mention at numerous times -- yes. You mention
10 at multiple times in this section the NAACP case, correct?

11 A. It looks like it's mentioned twice, yes, at least twice.

12 Q. And are you aware that the NAACP case involved a
13 challenge to Ohio's early voting calendar?

14 A. I think that I am aware of that, yes.

15 Q. And that calendar is not at issue in this case?

16 A. Yes.

17 Q. Am I right that there is no specific reference to Senate
18 Bills 205 and 216 in this section?

19 A. I think that's correct, yes.

20 Q. And I believe we covered this yesterday, but just to
21 make sure, is it fair to say that you haven't performed any
22 independent analysis of the specific justifications in this
23 case?

24 A. That's correct.

25 Q. I have down, from yesterday, that in your direct you had

1 mentioned that for Senate Factors One, Two, Three, Six, and
2 Seven you relied on Dr. Roscigno's report?

3 A. More heavily than Senate Factor Five is the way I think
4 I phrased it, yes.

5 Q. And that's because the Factors involved in Senate Factor
6 Five you were more familiar with in comparison to those other
7 factors?

8 A. That's correct.

9 Q. And am I right that if we were to do a comparison
10 between that NAACP case report and your report in this case, it
11 wouldn't just be that you followed his report, it would be
12 that, various sections, you copied his words, correct?

13 A. That's correct.

14 MR. KELLER: May I have a moment to consult, Your
15 Honor?

16 THE COURT: Yes, you may.

17 (Whereupon, there was a brief interruption.)

18 MR. KELLER: No further questions, Your Honor.

19 THE COURT: Thank you, Mr. Keller.

20 Mr. McTigue, any redirect?

21 MR. McTIGUE: Yes, Your Honor.

22 Your Honor, as an initial matter, it occurs to me that I
23 may have forgotten, at the end of the direct testimony
24 yesterday, to move into exhibit -- or into
25 admission -- Plaintiffs' Exhibit 1195, which is Dr.

1 Timberlake's rebuttal report to Dr. Hood.

2 THE COURT: Any objection, Mr. Keller?

3 MR. KELLER: No, Your Honor.

4 THE COURT: 1195 will be received.

5 MR. McTIGUE: Thank you.

6 - - -

7 REDIRECT EXAMINATION

8 BY MR. McTIGUE:

9 Q. Okay. Dr. Timberlake, do you recall Mr. Keller asking
10 you a number of questions yesterday concerning the tables in
11 your reports both as to usage rates and rejection rates of
12 absentee ballots and provisional ballots?

13 A. Yes.

14 Q. Okay. And those tables provide usage and rejection
15 rates as to minority and white voters, correct?

16 A. Not specifically of minority and white voters, but the
17 analyses of the correlation between percent minority in the
18 county. And then the attempt is to infer from that the
19 disproportionate usage and rejection of these ballots by
20 minorities, themselves, relative to whites.

21 Q. And you recall questions yesterday, as well, from Mr.
22 Keller where he asked about trends from one election to
23 another?

24 A. Yes.

25 Q. Okay. And do you recall, as well, him asking you if you

1 were, in these tables, attempting to measure the impact of the
2 specific changes in the absentee and provisional voting
3 requirements enacted by Senate Bills 205 and 216?

4 A. I do recall it, yes.

5 Q. Okay. Do you recall what your response was to that?

6 A. I believe that I said it was not to measure the specific
7 impact.

8 Q. So, if it wasn't to measure the specific impact of the
9 changes in the law, what was the purpose of those analyses?

10 A. The purpose was to assess, as I think about it as a
11 demographer, the extent to which minorities are at risk of
12 having their votes be counted impacted by the law. So, for
13 reasons that I've discussed, I think yesterday, but I can
14 elaborate on, I think that the only real way to test the
15 specific impact of those laws would be a way in which we would
16 require data that we simply don't have. And so what I've been
17 saying in some of my rebuttal reports is that the defense
18 experts' focus on that, I think, is misguided.

19 And so what I think makes more sense is to have other
20 testimony, other ways in which the Court can gather information
21 about the impact other than the kind of statistical analysis
22 that I'm performing. So what I'm trying to show -- what I'm
23 trying to answer is the question of whether there appears to be
24 any correlation at all between percent minority and, let's say,
25 the rejection of provisional ballots.

1 I don't know enough about how the Court would make a
2 decision about the impact of the law. But when I was going
3 into the research, it made sense to me that if there was no
4 relationship ever at any time between minorities and voting in
5 these ways, then in some ways it would be hard to see how there
6 could be a disparate impact, even though there may be an impact
7 on all voters.

8 So, the logic of the argument is, if the way in which
9 the law impacts voters is by making it harder for specific
10 categories of voters to vote -- and, by "that category," I mean
11 the less educated, less literate, poorer and so forth -- those
12 are all characteristics which are correlated with race and the
13 idea that is, if minorities are more likely to use these voting
14 methods and more likely, already, to have their ballots
15 rejected, then it would stand to reason that these burdens
16 would be disproportionately concentrated on minorities
17 themselves.

18 Q. So, Dr. Timberlake, is it fair to say that, in terms of
19 the statistical analysis reflected in the tables in your
20 reports, the bottom line there is showing a disproportionate
21 rejection rate for provisionals based on race? "By race," I
22 should say.

23 MR. KELLER: Objection, Your Honor. Leading.

24 THE COURT: Sustained. Rephrase.

25 MR. McTIGUE: Certainly.

1 MR. KELLER: Thank you, Your Honor.

2 BY MR. McTIGUE:

3 Q. Bottom line, can you tell us what those tables show?

4 A. Well, the bottom line is that, particularly in terms of
5 the rejection of provisional ballots and, to some degree, in
6 terms of the rejection of absentee ballots, there -- in many of
7 the years, but not all -- I think 2014 was an outlier, or an
8 exception -- in most years, there was a positive correlation
9 between the percent minority in the county and the rejection
10 rate of provisional and absentee ballots. Controlling for a
11 number of characteristics, that might be alternative
12 explanations for why you would see that correlation. So the
13 evidence that is indicative of -- What the evidence shows is
14 that there is a positive relationship between percent minority
15 and these rejection rates. And an inference that one could
16 draw from that is that the reason that that correlation exists
17 is because minorities in high-minority counties are using these
18 ballots and having their ballots rejected at higher rates.

19 Q. And, to be clear, by "positive relationship," you mean
20 higher rate?

21 A. Yes. So, a positive correlation in statistics means
22 that, as one variable gets bigger, the other variable tends to
23 get bigger, too. So, as the percentage of minorities rises in
24 a county, the rate of rejection of provisional ballots also
25 tends to go up, and vice versa.

1 Q. And if the Court were to -- Well, if the Court were to
2 conclude that any of the specific changes enacted in Senate
3 Bills 205 and 216 were resulting in rejection of provisional or
4 absentee ballots, what would be your conclusion as to the
5 likely racial impact of that?

6 A. In general, if it could be established that the changes
7 in the law increase the likelihood of provisional or absentee
8 ballots being rejected, then it would stand to reason
9 that -- and particularly if the reasons for those rejections
10 had to do with something about the voters' own characteristics,
11 like their education level or their literacy or something like
12 that, then it would stand to reason that the laws would
13 disproportionately impact the group that has more disadvantage
14 on those characteristics, such as education, literacy, poverty,
15 income, and things like that.

16 So, the logic of what I've been talking about is that,
17 if the -- if the way in which Senate Bills 205 and 216 impact
18 voters is by making it harder for the less educated and the
19 less literate to vote correctly, let's say, then, logically,
20 statistically, it would stand to reason that that impact would
21 be visited upon the group that has less of education, less
22 literacy. And, in the State of Ohio and in many other states,
23 that group would be African Americans, compared to whites.

24 Q. And, as a sociologist, do you study societal factors
25 such as education, poverty, residential, mobility, literacy,

1 automobile ownership and any disparity regarding those factors
2 by race?

3 MR. KELLER: Objection. Compound.

4 THE COURT: Sustained. It's the conjunctive "and"
5 that floored you, Mr. McTigue.

6 MR. McTIGUE: Yes. Let me --

7 THE COURT: Rephrase your question.

8 MR. McTIGUE: -- rephrase the question.

9 BY MR. McTIGUE:

10 Q. So, Dr. Timberlake, as a sociologist, do you study
11 societal factors such as education, poverty, residential
12 mobility, literacy and automobile ownership?

13 A. I study factors like that. I have not specifically
14 studied automobile ownership or literacy, but the other ones
15 you mentioned I have.

16 Q. Okay. And do you study those factors in relationship to
17 whether there's any disparity among those factors by race?

18 A. Yes. That has been the topic of most of my research.

19 Q. Now, you were also, I think, asked by Mr. Keller
20 yesterday -- Let me back up one second. You've already stated
21 that you answered Mr. Keller's questions yesterday that your
22 statistical analysis was not measuring the impact of the
23 changes in the laws directly, correct?

24 A. That's correct.

25 Q. Okay. And that would be -- Well, do you recall

1 questions from Mr. Keller yesterday about you weren't measuring
2 positive changes or negative changes?

3 A. Correct. I do recall that, yes.

4 Q. And do you recall, as well -- Well, strike that.

5 Again, bottom line, from your perspective, if there is a
6 rejection rate of provisionals or absentees that that -- that
7 rejection rate, without knowing what it's specifically due to,
8 still accounts for what?

9 A. I'm not sure I understand the question. Perhaps you
10 could --

11 Q. Certainly. You indicated that you recalled -- and I
12 agree, that question was pretty bad. You did state that you
13 recall answering questions yesterday about you were not
14 evaluating either negative or positive impacts from the laws at
15 issue in this case.

16 A. Yes.

17 Q. Okay. However, your statistical analysis, both
18 pre-implementation and post-implementation of these laws, still
19 shows rejection rates, correct?

20 A. Yes, with some exceptions that I think we discussed
21 yesterday. Not every year shows what I would consider to be a
22 strong relationship between county-percent minority and
23 rejection rates. But, in general, particularly in presidential
24 election years, there appears to be a fairly strong
25 relationship between, especially, provisional ballot rejection

1 and county-percent minority.

2 Q. Now, I want to also ask you, based on some questions
3 that Mr. Keller asked yesterday, your report in the present
4 case, which is Plaintiffs' Exhibit P1194, incorporates the
5 report that you filed in the OOC case, correct?

6 A. That's my understanding, yes.

7 Q. And, in the OOC case, you had also filed two errata
8 statements to that report, correct?

9 A. Correct.

10 Q. Okay. And those errata statements are incorporated with
11 the report that you are filing in this case, correct?

12 A. Correct.

13 Q. Okay. Now, with regard to the -- and you were asked
14 some questions yesterday about this, about the -- I don't
15 remember if you were asked or if you volunteered it, but you
16 gave some explanation about the two errata statements.

17 My question is, again, more bottom line. Did those
18 corrections that are set forth in the errata statements change
19 any of the conclusions that you reached in the report in the
20 OOC case?

21 A. The bottom line is no. The first erratum was simply to
22 correct the alignment of some rows in Table 1. So, it was
23 unrelated to the analysis entirely. It was a presentation
24 error, essentially.

25 The second erratum had to do with some slight changes in

1 the way in which I calculated the county poverty rates. And,
2 by assigning a cutoff of 15 percent poverty in a county to put
3 a county in a high poverty group or a low poverty group, that
4 caused three counties to change groups from the earlier
5 analysis, or the earliest version of Table 1, to the latest
6 version of Table 1 in the OOC report.

7 Those counties are all very small in population, and so
8 they don't contribute very much to the overall results that you
9 would get. They're something like -- Two of the counties were
10 less than one percent of Ohio's population, and the other
11 county was something like 1.2 percent. And, so, when you
12 switch those three counties into different groups, it just
13 doesn't impact the analysis appreciably.

14 THE COURT: Did the second erratum in any way change
15 your conclusion, Doctor?

16 THE WITNESS: No, it did not. And I think it states
17 as much in that erratum. I think the very last sentence of
18 the, sort of, paragraph in that mentions that.

19 MR. McTIGUE: Your Honor, may I have a moment?

20 THE COURT: And I want to understand. Those two
21 errata statements relate to Judge Watson's case, the OOC case;
22 am I correct?

23 THE WITNESS: That's correct.

24 THE COURT: And were there any errors to be corrected
25 in your report in this case, which is 1194?

1 THE WITNESS: Not that I'm aware of.

2 THE COURT: All right.

3 Go ahead, Mr. McTigue.

4 MR. McTIGUE: May I have a moment?

5 THE COURT: Yes.

6 (Whereupon, there was a brief interruption.)

7 MR. McTIGUE: No further questions, Your Honor.

8 THE COURT: Any recross, Mr. Keller?

9 MR. KELLER: No, Your Honor.

10 THE COURT: All right. Thank you very much, Dr.

11 Timberlake.

12 THE WITNESS: Thank you, Your Honor.

13 (Witness excused.)

14 MS. CRAWFORD: The Plaintiffs call Jocelyn Bucaro.

15 (Witness sworn.)

16 MR. McTIGUE: Your Honor, may I approach and retrieve
17 some of the exhibits?

18 THE COURT: Yes, you may.

19 Ma'am, bend the microphone towards you and speak clearly
20 into it, please.

21 THE WITNESS: Okay.

22 THE COURT: Please proceed. Ms. Bucaro.

23 MS. CRAWFORD: Thank you, Your Honor.

24 - - -

25

JOCELYN BUCARO,

AFTER HAVING BEEN DULY SWORN, TESTIFIED AS FOLLOWS:

CROSS-EXAMINATION

BY MS. CRAWFORD:

Q. Mrs. Bucaro, thank you for coming up today from Butler County. I understand it's election season, so you have a lot going on.

Could you please state your full name for the record?

A. Jocelyn Bucaro.

Q. And what is your current position?

A. Deputy Director of the Butler County Board of Elections.

THE COURT: Ms. Bucaro, would you spell your last name for the record, please?

THE WITNESS: Sure. B-u-c-a-r-o.

THE COURT: All right.

BY MS. CRAWFORD:

Q. And how long have you been with the Board of Elections?

A. Four-and-a-half years.

Q. Has that always been as the Deputy Director?

A. I was hired originally as Director, and was appointed Deputy Director four years ago.

Q. Okay. And what are your duties in your current position?

A. Together with the Director, we manage the office at the Board of Elections, carry out the duties proscribed in the Ohio

1 Revised Code to register voters, prepare for the -- prepare
2 ballots, accept candidate filings, test voting equipment,
3 prepare for an election, hire precinct election officials, all
4 of the duties proscribed in the Revised Code.

5 Q. Thank you.

6 MS. CRAWFORD: And, Your Honor, as an initial matter,
7 I would like to introduce the stipulated exhibits. And Mr.
8 Conover can correct me, but they are Plaintiffs' Exhibit 973
9 through 987, Exhibits 1747 through 1998 --

10 THE COURT: Wait. 1747 through 1998?

11 MS. CRAWFORD: Yes, Your Honor. And then Plaintiffs'
12 Exhibits 3925 through 3930.

13 THE COURT: So, Mr. Conover, 973 through 978 --

14 MS. CRAWFORD: 987.

15 THE COURT: I'm sorry. I was looking at 987, and I
16 read something different. Imagine how that happens.

17 1747 through 1998 and 3925 through 3930.

18 Mr. Conover, is there any objection to the admission of
19 those exhibits?

20 MR. CONOVER: No objection, Your Honor.

21 THE COURT: All right. Thank you very much.

22 MR. CONOVER: Thank you.

23 THE COURT: Ms. Crawford, please continue.

24 MS. CRAWFORD: Thank you.

25 BY MS. CRAWFORD:

1 Q. Ms. Bucaro, what is your understanding -- Well, first I
2 should ask, are you familiar with the requirements for absentee
3 and provisional ballots?

4 A. Yes.

5 Q. And what is your understanding of the information a
6 voter must provide on a provisional ballot form in order for
7 that ballot to count?

8 A. They have to provide their printed name, their current
9 address, their date of birth, one form -- a proper form of
10 identification, including a Social Security number, last four
11 digits, an Ohio driver's license or State ID number, or show a
12 copy of a utility bill or other form of identification
13 proscribed, and provide their signature.

14 Q. And do you know whether any of these required categories
15 are the result of recent changes in the law?

16 A. Yes.

17 Q. And which of these?

18 A. The date of birth, current address -- and current
19 address are the two new pieces of information.

20 Q. And that's the 2014 change?

21 A. Correct.

22 Q. Okay. And, just briefly, would you describe the Butler
23 County Board's process for reviewing provisional ballots in the
24 office?

25 A. The Board has a policy directing the staff of the Board

1 of Elections to provide a review of provisional ballot
2 envelopes to determine whether or not the voter was eligible to
3 cast a ballot in the election. That includes two checks by a
4 Democrat staff person and a Republican staff person in our
5 office. We review the envelope for completion. Whether or not
6 there is any information on the face of the envelope that's
7 missing that's required, that would be noted. We then look the
8 voter's registration up in our voter registration database to
9 determine whether or not the voter was registered in Butler
10 County. And if we don't locate them in Butler County, we'll
11 look them up in the statewide voter registration database to
12 determine if they're registered anywhere else in the State of
13 Ohio.

14 If we determine that the voter was registered in Butler
15 County, we then determine whether or not their current address
16 is a valid address in the County. And we also determine
17 whether or not the voter cast any other form of ballot, meaning
18 an absentee ballot, in Butler County in the election.

19 We'll also determine whether or not the voter cast the
20 ballot in the correct precinct or polling location based on
21 their current address.

22 If the voter was determined to be registered in a
23 different county, we will contact that county to determine
24 whether or not the voter cast a ballot in that county, as well
25 as this -- for this election.

1 If we determine that the voter cast only this ballot in
2 this election, was eligible, resides at the address they
3 listed, you know, cast the ballot in the correct location,
4 everything was completed properly, we'll recommend to the Board
5 that the ballot be counted. And if any of that information is
6 determined to be inaccurate or invalid, then we would recommend
7 the ballot not be counted.

8 Q. Let me try and break that down a little bit.

9 A. Yeah.

10 Q. So, when the Board is actually reviewing the
11 recommendations, do they look at the actual provisional ballot
12 envelopes themselves, or do they look at a report?

13 A. They do not look at the ballots, the provisional ballot
14 envelopes for ballots that we recommend to be counted. They do
15 review the face of the envelope on ballots that are determined,
16 or recommended, not to be counted.

17 Q. So, all of the ones that you recommend to be not
18 counted, the Board will look at each envelope individually?

19 A. They'll -- Yes. They don't always look at each
20 envelope. If we determine a voter was not registered anywhere
21 in the State of Ohio, generally, they'll look at that as a
22 category of envelopes; and they won't necessarily review each
23 individual envelope. But for other categories in which voters
24 votes won't be counted, they'll look at individual envelopes.

25 Q. Okay. And you talked a little bit about that review

1 process.

2 A. Uh-huh.

3 Q. Let me show you --

4 THE COURT: Before you proceed, Ms. Crawford, I need
5 to make sure that Ms. Clark has the stipulated exhibits.

6 (Brief pause in the proceedings.)

7 THE COURT: Thank you, Ms. Crawford. Please continue.

8 MS. CRAWFORD: Yes.

9 THE COURT: Incidentally, quick question for you,
10 Ms. Bucaro. Has Butler County ever undertaken, prior to the
11 enactment of either Senate Bill 205 or 216, any studies to
12 determine whether there was voter fraud?

13 THE WITNESS: We have under directive by the Secretary
14 of State, and we have not found that to be -- we have found one
15 instance where a voter cast a ballot in Butler County and in
16 Hamilton County in the same election. And that voter was
17 referred to the Prosecuting Attorney's Office and, I believe,
18 was charged.

19 THE COURT: Okay. In which election was that?

20 THE WITNESS: It was before I started. I believe it
21 was 2010.

22 THE COURT: And the directive came from the Secretary
23 of State to conduct some type of survey to determine whether
24 there was voter fraud?

25 THE WITNESS: In that case, no. But in subsequent

1 elections, there have been directives from the Secretary of
2 State's Office.

3 THE COURT: And what do those directives require you
4 to do?

5 THE WITNESS: They required us to determine whether or
6 not any voter may have committed voter fraud. And, if so, the
7 Board can determine in a public meeting whether or not to refer
8 those instances to our prosecuting attorney. And the directive
9 also asks us to determine whether or not there were any
10 instances of voter suppression, as well, and refer those in the
11 same way.

12 THE COURT: And what did you understand, or what do
13 you understand, voter suppression to mean?

14 THE WITNESS: Voter intimidation, efforts to prevent a
15 voter who otherwise is eligible to vote from voting.

16 THE COURT: Were these directives passed down to your
17 Board before the enactment of either 205 or 216, to your
18 knowledge?

19 THE WITNESS: I believe the first one came after the
20 2012 election. So, yes.

21 THE COURT: Okay. But that was the only one?

22 THE WITNESS: Yeah. I believe -- yeah. Uh-huh.

23 THE COURT: And what did that first directive require
24 you to do?

25 THE WITNESS: To look for both instances of voter

1 suppression and voter fraud.

2 THE COURT: Did it delineate how you were to go about
3 looking for voter suppression or voter fraud?

4 THE WITNESS: To my recollection, no, hu-uh.

5 THE COURT: But Butler County never conducted any
6 independent surveys or analyses to determine whether there was
7 voter fraud?

8 THE WITNESS: The only -- the only survey we would
9 have conducted would have been, through the provisional review
10 process, if a voter was found to have voted in both our county
11 and in a different county, then that would be the only review.

12 THE COURT: Right. All right.

13 Please continue, Ms. Crawford.

14 MS. CRAWFORD: Thank you, Your Honor.

15 BY MS. CRAWFORD:

16 Q. Just a couple of questions about what Judge Marbley
17 asked you about. With respect to the voter who voted in both
18 Hamilton and Butler County, were both of those votes ultimately
19 counted?

20 A. I believe they were, yes.

21 Q. Both votes were counted?

22 A. Uh-huh.

23 Q. Okay.

24 THE COURT: Was that voter voting by provisional
25 ballot? Did he or she?

1 THE WITNESS: It was before I was appointed.

2 THE COURT: Oh, I see.

3 THE WITNESS: It was before I was involved. So,
4 without looking again at the facts of the case, I can't speak,
5 for sure, whether or not it was a provisional ballot the voter
6 cast.

7 MS. CRAWFORD: Okay.

8 BY MS. CRAWFORD:

9 Q. And if you'd take a look, this is the form you spoke
10 about about provisional review where each reviewer makes
11 notations on the back of the provisional ballot envelope,
12 correct?

13 A. Yes, that's correct.

14 Q. And, so, it states the party of the reviewer and the
15 items they reviewed in that checklist, correct?

16 A. Correct.

17 Q. And then, ultimately, it gives a reason why that
18 provisional ballot should be valid or invalid, correct?

19 A. Correct.

20 Q. Okay. And I'll come back to this particular one, but I
21 just wanted to provide an example.

22 THE COURT: While you're doing that, Ms. Crawford, Mr.
23 McTigue, a young lady just came into the courtroom. Do you
24 know whether she is one of your witnesses?

25 MR. McTIGUE: Yes.

1 BY MS. CRAWFORD:

2 Q. And with respect to that form, does the Board of
3 Elections see the provisional ballot review form?

4 A. Yes.

5 Q. So, they see that form when they're making their
6 decision about the particular provisional ballots?

7 A. Yes.

8 Q. Okay. Now, when a voter is actually voting a
9 provisional ballot and filling out the associated affirmation
10 form, do you instruct precinct election officials to look to
11 see whether a form is complete prior to leaving a polling
12 place?

13 A. Yes.

14 Q. And the poll-worker -- you actually have a process in
15 Butler County where the poll-worker is required to affix their
16 signature on the receipt from the electronic poll books,
17 correct?

18 A. Yes.

19 Q. And could you explain that process for me, please?

20 A. So, we have used electronic poll books now for four
21 years in Butler County. And our electronic poll books have a
22 printer. When a voter is checked in on the ePoll book, if the
23 voter is found to be a provisional voter for whatever reason,
24 the poll-workers print a receipt and circle the voter's
25 precinct where they should vote. And they initial that receipt

1 before sending the voter to the provisional area or to the
2 correct polling location.

3 The provisional check-in judges then are instructed to
4 advise the voter on filling out the provisional form, make sure
5 they give the voter the correct precinct envelope that matches
6 the precinct on that receipt. The voter then completes the
7 envelope per the instructions, and then the poll-workers are
8 instructed -- two poll-workers are instructed to review the
9 form for completion and initial the receipt before taping it to
10 the back of the provisional envelope.

11 Q. Thank you. And what is the purpose of the poll-workers
12 signing that receipt?

13 A. If we find that a provisional envelope was not completed
14 properly by the voter, we will review which poll-workers
15 reviewed that particular envelope. And we may not ask them to
16 return, or we may retrain them. We'll -- We'll use that as a
17 skills assessment for our poll-workers.

18 Q. So it's to identify which, if any, poll-workers are
19 making errors?

20 A. Yes.

21 Q. Okay. And if there are, in fact, information -- there
22 is information missing on the provisional ballot envelopes, you
23 aren't permitted to contact the voters, via phone or e-mail, to
24 correct that information, correct?

25 A. That's correct.

1 Q. And that's by directive?

2 A. Yes.

3 Q. And Board members from Butler County have even requested
4 that you contact these voters, correct?

5 A. Yes.

6 Q. But you're unable to do so, per directive?

7 A. Correct.

8 Q. But you are permitted to contact voters after the
9 election has been certified for additional information for
10 registration purposes, correct?

11 A. Yes.

12 Q. Could you explain this distinction?

13 A. No. I don't know that I can explain. The distinction
14 between contacting them before the election is certified and
15 after?

16 Q. Right. Is it simply just you're only allowed to contact
17 them for registration purposes?

18 A. Well, as we are with any other voter registering to
19 vote, we are permitted to contact them if they did not provide
20 a required piece of information on their registration form.
21 We're actually required to contact them for the missing
22 information.

23 Q. So you're required to contact them for missing
24 information after the election has been certified?

25 A. Yes.

1 Q. But you cannot contact them prior to certification to
2 ask about questions you might have on their individual form?

3 A. As I understand the directive, yes.

4 Q. Okay. Now, with respect to the date-of-birth field, the
5 law allows Boards to accept ballots despite a date-of-birth
6 mismatch or omission by a vote of three Board members, correct?

7 A. Yes.

8 Q. And is this true for provisionals, as well as absentees?

9 A. Yes.

10 Q. And what is your understanding of this exception?

11 A. My current understanding is that it applies to the month
12 and day of a voter's birthdate; that if the month or day does
13 not match the voter registration record, that the Board, by a
14 vote of three members, can accept that provisional ballot for
15 counting.

16 Q. And the Board can still verify the identity of
17 individuals who leave their date of birth off of provisional or
18 absentee envelopes, correct?

19 A. In most cases, yes.

20 Q. And prior to this law, you were still -- prior to this
21 law which added the date-of-birth field, your office was able
22 to identify voters before the date-of-birth requirement,
23 correct?

24 A. Yes.

25 Q. But now the Board is required to reject ballots with

1 missing date of births that under the previous laws they would
2 not have had to reject, correct?

3 A. Yes.

4 Q. Now, this is Plaintiffs' Exhibit 1764. And, here, the
5 vote was rejected due to date of birth error, correct? I can
6 show you the next page.

7 THE COURT: You mean the ballot was rejected? You
8 said "the vote." The ballot was rejected?

9 MS. CRAWFORD: Yes.

10 BY MS. CRAWFORD:

11 Q. This is the form on the back.

12 A. Yes.

13 Q. And if you -- The bottom line -- I don't know if you can
14 read it -- but it says the BMV has her date of birth as
15 7-27-50, although her registration card says 7-25-50, correct?

16 A. Uh-huh.

17 Q. And the voter provided --

18 THE COURT: When you said "uh-huh," you mean "yes"?

19 THE WITNESS: Yes. I'm sorry. Yes.

20 THE COURT: That's all right.

21 MS. CRAWFORD: Thank you, Your Honor.

22 BY MS. CRAWFORD:

23 Q. And the voter provided her date of birth on the
24 provisional envelope as 7-27-50, correct?

25 A. Yes.

1 Q. But despite this discrepancy in the system, this was not
2 resolved in favor of the voter, correct?

3 A. Yes.

4 Q. It was -- Rather, it was provided to us as one of the
5 provisional ballots that was ultimately not counted, correct?

6 A. Yes.

7 Q. And if you take a look at the form, it appears the voter
8 was found to not currently be registered by the first reviewer,
9 correct?

10 A. Correct.

11 Q. But the second reviewer was able to find that voter in
12 your system, correct?

13 A. It appears that way, yes, uh-huh.

14 Q. And because her date-of-birth field was incorrect, or
15 there were multiple date-of-births contained within your
16 system, could the inability to find her by the first reviewer
17 have been because they used the voter's date of birth to search
18 for that voter?

19 A. It's possible, yes.

20 Q. So more fields for your office also have the possibility
21 of introducing more errors into your database, correct?

22 MR. CONOVER: Objection, Your Honor.

23 THE COURT: Basis, Mr. Conover?

24 MR. CONOVER: Speculation.

25 THE COURT: Well, as the Deputy Director of the Butler

1 County Board of Elections, I believe that Mrs. Bucaro will be
2 in a position to answer that question, given her
3 responsibilities, position, and experience. So your objection
4 is overruled.

5 You may answer, Ms. Bucaro, if you know.

6 MR. CONOVER: Thank you, Your Honor.

7 THE WITNESS: In a case like this, yes, it could.

8 MS. CRAWFORD: Thank you.

9 BY MS. CRAWFORD:

10 Q. Now, with respect to the address field on provisional
11 ballots, when a voter is required to vote a provisional ballot,
12 prior to a voter even receiving that provisional ballot from a
13 poll-worker, a voter would have had to provide a current
14 residence to that poll-worker verbally, correct?

15 A. Yes.

16 Q. And you testified the poll-worker then will circle the
17 correct precinct on the receipt, correct?

18 A. Yes.

19 Q. So, only after that poll-worker has confirmed the
20 correct precinct is a provisional voter provided with the
21 provisional ballot, correct?

22 A. Yes.

23 Q. And because of this process, there isn't a concern that
24 a voter is voting in the improper precinct based on that
25 address, correct?

1 A. No. That's very rare in Butler County.

2 Q. Okay. Now, now that address is a required field on
3 provisional ballot envelopes, you've had approximately 24
4 voters whose ballots were rejected based on the address field
5 between 2014 and 2015 elections, correct? I can show you
6 the --

7 A. I'm going to say, based on your knowledge of looking at
8 our records and the records that we've provided, I will say
9 that sounds about right.

10 Q. Okay. Well, I can show you the certification form.

11 A. Thank you.

12 Q. This is Plaintiffs' Exhibit 3926. And if you look at
13 B6, that says seven voters failed to provide the current
14 address, correct?

15 A. Yes. And this was for 2014, or '15?

16 Q. 2014.

17 A. Okay.

18 Q. And this is Plaintiffs' Exhibit 3928. And it's for
19 2015, correct?

20 A. Uh-huh, yes.

21 Q. And, in B6, it says 17 voters failed to provide a
22 current address, correct?

23 A. Yes.

24 Q. Okay. And many of these voters actually were rejected
25 in Butler County due to an invalid address, correct?

1 A. Yes.

2 Q. And what does it mean when the address is invalid?

3 A. It means that the address could not be verified as a
4 valid address in Butler County in our voter registration
5 system.

6 Q. And is this in the directive that requires you to check
7 whether or not the address is valid?

8 A. I'm not sure that it specifies specific address points
9 being confirmed in our voter registration database. To my
10 knowledge, I -- I don't know.

11 Q. But this is the process your office goes through when
12 processing provisional ballots?

13 A. Correct. Our system is connected to our county GIS
14 mapping system. And we use address points for our voter
15 registration, rather than address ranges.

16 Q. And do you ever check to make sure -- other databases to
17 make sure a residence is valid?

18 A. Yes, always.

19 Q. And what databases are those?

20 A. The County Engineer's Office and the County Auditor's
21 Office.

22 Q. Okay. Do you ever check Google Maps?

23 A. No. That's -- No.

24 Q. Do you ever go out to the property to see if it's a
25 valid address?

1 A. Not when reviewing provisional ballots.

2 Q. Okay. This is Plaintiffs' Exhibit 1747. And if I turn
3 to the second page, you can see this provisional ballot was
4 rejected for an invalid address, correct?

5 A. Yes.

6 Q. But the voter did fill in that address field, correct?

7 A. Yes.

8 Q. And I will represent to you that I went to Google Maps
9 for this voter, and it does come up as a valid address. But
10 despite it coming up as valid, if it doesn't come up in your
11 search of the GIS database or Auditor's Office, then you're
12 required to reject it, correct?

13 MR. CONOVER: Objection, Your Honor.

14 THE COURT: Just a second.

15 Mr. Conover?

16 MR. CONOVER: Objection, Your Honor.

17 THE COURT: What's your basis?

18 MR. CONOVER: Counsel was testifying.

19 THE COURT: I'm sorry. I think I misheard you. What
20 is your legal basis, Mr. Conover?

21 MR. CONOVER: She had said that she had gone to the
22 Google Maps herself and was giving that testimony.

23 THE COURT: This is cross-examination, as you know,
24 Mr. Conover. Ms. Crawford is allowed to lead. I think that
25 that information was put in context to the question.

1 And you are right, generally. While the editorial
2 remarks 99.9 percent of the time would be stricken, in the
3 context of this question, I'm going to allow that opening
4 sentence to stand.

5 MR. CONOVER: Thank you, Your Honor.

6 THE COURT: Your objection is noted, but overruled.

7 MR. CONOVER: Thank you, Your Honor.

8 THE COURT: You may answer, Ms. Bucaro, if you know.

9 THE WITNESS: Because we're asked to determine whether
10 the voter provided a current address, if we can't determine
11 whether the address is valid, then we would reject the ballot.

12 BY MS. CRAWFORD:

13 Q. Okay. This is Plaintiffs' Exhibit 1749. And this
14 particular provisional ballot was also rejected for address
15 reasons, correct?

16 A. Yes.

17 Q. And, again, it appears the voter lists a full address,
18 correct?

19 A. Yes.

20 Q. But when your staff looked it up, they could not find
21 this address?

22 A. Correct.

23 Q. And are you aware there is an Oxford Reily Road in
24 Butler County?

25 A. Am I personally aware? No.

1 Q. I think it's only two letter -- there is a road that's
2 only two letters off. So if the voter only misspelled his
3 street address, is this something that your office would
4 correct?

5 A. Yes. We would not discount because of a misspell.

6 Q. Okay. And how would this be caught in your search?

7 A. We would have searched, in multiple ways, for this
8 address point.

9 Q. Okay. Do you remember the particular places that were
10 searched for for this particular ballot?

11 A. I do not. I did not take part in this search.

12 Q. Okay. This is Plaintiffs' Exhibit 1753. And this
13 voter's provisional ballot was also rejected for an invalid
14 address, correct?

15 A. Yes.

16 Q. And the voter wrote on the address line "Hope Mission,"
17 correct?

18 A. Yes.

19 Q. And do you know that Hope Mission is a homeless shelter?

20 A. Yes.

21 Q. And this voter wrote the name of the homeless shelter in
22 the street address line, correct?

23 A. Yes.

24 Q. And, in addition, the voter provided three forms of
25 identification, correct?

1 A. Yes.

2 Q. And the rest of the ballot form appears to be complete,
3 correct?

4 A. Yes.

5 Q. And on the following page, it does -- it is checked that
6 the voter is registered, correct?

7 A. Yes.

8 Q. But, yet, under the new laws that the address is a
9 required field, this ballot was rejected, correct?

10 A. Yes.

11 Q. Do you think this is fair?

12 A. No.

13 MR. CONOVER: Objection, Your Honor.

14 THE COURT: Basis?

15 MR. CONOVER: Argumentative.

16 THE COURT: Overruled.

17 MR. CONOVER: Thank you.

18 BY MS. CRAWFORD:

19 Q. Now, with respect to the identification field, if
20 someone provides a Social Security number but they previously
21 provided a driver's license number or other kind of
22 identification to the Board but that was not a Social Security
23 number, can the Board accept the ballot still?

24 A. If they provide something other than a Social Security
25 number?

1 Q. Let me state it a little differently.

2 A. Okay.

3 Q. So, in your system, the voter has previously provided
4 the Social Security number --

5 A. Uh-huh.

6 Q. -- and that's the number you have in your system.

7 A. Uh-huh.

8 Q. Then later they provide a driver's license number or
9 other identification, but that new form is not in your system.
10 Are you able to accept that ballot?

11 A. Yes.

12 Q. Okay. I'm showing you Plaintiffs' Exhibit 1768. And,
13 here, the ballot was rejected due to an error in the last four
14 digits of the Social Security number, correct?

15 A. Yes.

16 Q. And it looks like the voter wrote "0857." But if we
17 look at the back, in the notes, it says: System has -- at the
18 bottom -- System has 0851 and does not -- I don't know what the
19 next word is, but have 0857. Correct?

20 A. Uh-huh. Yes.

21 Q. We don't know which number is actually correct, right,
22 the voter or the one in the system?

23 A. No, not based on this discrepancy.

24 Q. And you aren't permitted to contact the voter to find
25 out which is actually the correct identification number,

1 correct?

2 A. Yes.

3 Q. In this case, you're relying on the system to be
4 correct, right?

5 A. And the voter's original registration card, if we have
6 it.

7 Q. Right. But even if you did have the voter's original
8 registration form, here, we're talking about the difference
9 between a "1" and a "7," correct?

10 A. Yes.

11 Q. And, those two numbers, they could look pretty similar
12 on a voter's registration form, correct --

13 A. Yes.

14 Q. -- because it's handwritten?

15 A. Uh-huh, yes.

16 Q. So there is the possibility that your system -- it was
17 entered into your system incorrectly, right?

18 A. Yes. Usually, we will look for the voter registration
19 card to ensure that that was not the case and make sure that
20 what our system has matches what the voter gave us in their
21 registration card in a discrepancy like this.

22 Q. Thank you. Now, Butler County provides no notice to a
23 provisional voter to correct any error on their provisional
24 application form, correct?

25 A. Yes.

1 Q. But a provisional voter is able to come in to show a
2 valid ID if they did not have valid ID with them on Election
3 Day, correct?

4 A. Yes.

5 Q. And they have seven days to do so?

6 A. Yes.

7 Q. And, previously, those voters had ten days, correct?

8 A. Yes.

9 Q. Now, can someone with an ID mismatch come in to fix that
10 problem within that seven-day period?

11 A. No.

12 Q. So, if it was an instance like I showed you before, that
13 voter wouldn't be able to come in and correct that?

14 A. No.

15 Q. And it happens infrequently that voters come in to
16 provide identification, correct?

17 A. Yes.

18 Q. Because a voter would have to realize on his or her own
19 that they forgot to provide identification of some sort,
20 correct?

21 A. They're given --

22 MR. CONOVER: Objection, Your Honor.

23 THE COURT: Basis, Mr. Conover?

24 MR. CONOVER: Calls for speculation.

25 THE COURT: Sustained.

1 MR. CONOVER: Thank you.

2 THE COURT: Rephrase your question, Ms. Crawford.

3 MS. CRAWFORD: Thank you, Your Honor.

4 BY MS. CRAWFORD:

5 Q. You don't reach out to voters to tell them there is
6 missing identification information on their provisional
7 envelopes, correct?

8 A. No.

9 Q. Not by phone?

10 A. No.

11 Q. You do provide them with the hotline form when they're
12 voting, correct?

13 A. Yes.

14 Q. And the only reason a voter is allowed to come in is to
15 provide identification that had not previously been provided,
16 correct?

17 A. Yes.

18 Q. Do you think there would be a difference between
19 allowing someone to fix a missing identification problem and
20 allowing someone to fix a missing date of birth or address?

21 A. No.

22 Q. Now, in terms of absentee ballots, could you briefly run
23 through your process for reviewing absentee ballots?

24 A. Are you referring to applications or returning voted
25 absentee ballots?

1 Q. I'm referring to reviewing the absentee ballot
2 envelopes.

3 A. It's a similar process. We have our staff overview the
4 envelope by first looking up the voter's record in our voter
5 registration system, comparing the information provided on the
6 ID envelope with the information in our system, including the
7 voter's name, the voter's date of birth, the ID provided,
8 whether it be the last four digits of the voter's Social
9 Security number or driver's license number, and checking to
10 ensure the voter signed the ID envelope, and making sure the
11 signature roughly matches the signature in our system.

12 Q. And when a ballot is rejected, does your staff keep
13 track of the reason that it's rejected?

14 A. Yes.

15 Q. And you provided us with a spreadsheet of the voters and
16 the reason their ballots were rejected, correct?

17 A. Yes.

18 Q. I'm not going to be able to fit all of this on here, but
19 this is Plaintiffs' Exhibit 3924. And does this appear to be
20 that spreadsheet --

21 A. Yes.

22 Q. -- of the rejected absentee ballots?

23 A. Yes.

24 MS. CRAWFORD: At this time, Your Honor, I'd like to
25 move Plaintiffs' Exhibit 3924 into evidence.

1 THE COURT: Any objection, Mr. Conover?

2 MR. CONOVER: I'd only object in the sense that I
3 don't know what year this is from.

4 THE COURT: All right. Your objection is well taken.

5 Ms. Crawford, would you establish, through the witness,
6 the year of this exhibit?

7 MS. CRAWFORD: Yes, Your Honor.

8 BY MS. CRAWFORD:

9 Q. Do you know what year this is?

10 A. It appears to be 2014.

11 THE COURT: And on what do you base that, Ms. Bucaro?

12 THE WITNESS: Their return date.

13 THE COURT: Any further objection, Mr. Conover?

14 MR. CONOVER: No objection, Your Honor.

15 THE COURT: Exhibit 3924 will be received, Ms.
16 Crawford.

17 MS. CRAWFORD: Thank you, Your Honor.

18 BY MS. CRAWFORD:

19 Q. Now, with respect to absentee voting, is the process the
20 same for early in-person voters and a vote by mail?

21 A. No. In-person early voters are permitted to vote on our
22 electronic voting equipment, and they are not required to
23 complete an ID envelope.

24 Q. So there is no risk of a ballot being rejected for
25 failing to fill out that ID envelope properly for in-person

1 voters, correct?

2 A. Correct.

3 Q. Now, in terms of notice to absentee voters, unlike
4 provisional voters, absentee voters do get an opportunity to
5 correct the information, missing or incorrect information,
6 provided on their absentee envelopes, correct?

7 A. Yes.

8 Q. And that is through the Form 11-S?

9 A. Yes.

10 Q. And use of this form requires a certain degree of
11 literacy, correct?

12 A. Yes.

13 Q. You have to be able to read and understand the error
14 that voter has made?

15 A. Yes.

16 Q. And it's asking voters to fill in correctly the same
17 information that they already once filled in incorrectly,
18 right?

19 A. Yes.

20 Q. And you aren't permitted to contact voters via telephone
21 or e-mail to make these corrections, right?

22 A. No, not -- not over the phone, correct.

23 Q. But you do have phone numbers and e-mail addresses for
24 at least some of these voters from their absentee ballot
25 application forms, correct?

1 A. Yes.

2 Q. Because that is a field on the -- optional field on the
3 application form, correct?

4 A. Yes.

5 Q. So it's possible that you could contact these voters if
6 permitted?

7 A. Yes.

8 Q. And voters have seven days after the election to return
9 the 11-S forms, correct?

10 A. Yes.

11 Q. And when does your office stop mailing 11-S forms during
12 that seven-day period?

13 A. We mail them out for any ballot that we receive that was
14 timely mailed before Election Day but we receive after Election
15 Day. If there is information missing, we will send them an
16 11-S form as long as we determine the ballot is eligible.

17 Q. So, do you mail out 11-S forms all the way up until the
18 sixth day after the election?

19 A. We could, yes.

20 Q. And it's possible at that point the voter might not even
21 receive that 11-S form until after the cure period, correct?

22 A. Yes, uh-huh.

23 Q. Now, with respect to identification on absentee ballot
24 envelopes, your Board is required to reject a ballot even if
25 the Social Security number or driver's license number is only

1 one number off, correct?

2 A. Yes.

3 Q. Now, I'm showing you what's been marked as Plaintiffs'
4 Exhibit 1998. And, in this example, it appears the ballot was
5 rejected due to the Social Security number, correct?

6 A. Yes.

7 Q. And if we take a look at the following form, this is
8 their voter's registration form, correct?

9 A. Yes.

10 Q. And, here, the number is 7429?

11 A. Yes.

12 Q. And if we look back at the original, or look back at the
13 absentee envelope, the voter appears to have written "7924"?

14 A. Yes.

15 Q. So it appears the voter transposed a few numbers,
16 correct?

17 A. Correct.

18 Q. And, as we saw, in order to receive this particular
19 ballot, the voter already had to fill out the application with
20 the correct Social Security number?

21 A. Yes.

22 Q. And they wouldn't have received that ballot unless the
23 Social Security number was correct originally?

24 A. Yes.

25 Q. So, essentially, at this point, her ballot is required

1 to be denied under the directive for transposing a few numbers,
2 correct?

3 A. Correct.

4 Q. And under the laws and directives, the Board has no
5 discretion to accept ballots like this, correct?

6 A. Correct.

7 Q. Now, prior to the new laws, you were able to count
8 absentee ballots when they were missing or had incorrect
9 date-of-births, correct?

10 A. Yes.

11 Q. Now I'm showing you Plaintiffs' Exhibit 3925. And it's
12 the Official Certification for Absentee Ballots for 2014,
13 correct?

14 A. Yes.

15 Q. And if you take a look at C6 where it says "Missing or
16 incorrect birthdates that does not meet exceptions," there were
17 186 voters' ballots who were rejected because of the
18 date-of-birth field, correct?

19 A. Yes.

20 Q. And this is Plaintiffs' Exhibit 3927, and it's the 2015
21 Absentee Ballot Certification, correct?

22 A. Correct.

23 Q. And, at C6, it says, for date of birth, there were 25
24 ballots that were rejected?

25 A. Yes.

1 Q. Thank you. Assuming there are no other errors on these
2 absentee ballot envelopes, these ballots would have been
3 counted prior to the new laws, correct?

4 A. Correct.

5 Q. And, during the 2014 election, you actually changed
6 forms in the midst of the election due to the errors being made
7 with respect to the date-of-birth field, correct?

8 A. Yes.

9 Q. And this is Plaintiffs' Exhibit 3929. And can you tell
10 if this was the original form?

11 A. Yes.

12 Q. And how can you tell that?

13 A. Because of the date-of-birth fields. The text, month,
14 day and year, is contained within the boxes.

15 Q. And this is Plaintiff's Exhibit 3930. And this is the
16 new form where the date-of-birth field has been altered?

17 A. Yes.

18 Q. And could you please explain why you made this change?

19 A. Because we found a lot of voters were leaving the
20 birthdate fields blank on the original form. And we determined
21 that it was probably because of the way the form was formatted
22 with those boxes containing the text, month, day and year; that
23 voters were just glancing over that and missing those fields
24 that were required.

25 Q. And did this change help?

1 A. Yes.

2 Q. And that can just be seen by the numbers, correct?

3 A. Yes, uh-huh.

4 Q. And this looks -- this forms looks a little different
5 than the ones we've seen for other counties. So, you are
6 permitted to create your own forms, correct?

7 A. Yes.

8 Q. And you made this change because you wanted these votes
9 to be able to count, correct?

10 A. Yes.

11 Q. Now, I'm showing you what's been marked as Plaintiffs'
12 Exhibit 1987. And this is the absentee ballot envelope,
13 correct?

14 A. Yes.

15 Q. And it appears, here, that the voter provided the
16 current date, rather than her year of birth, correct?

17 A. Yes.

18 Q. And that's because the "10-29-15" is in the
19 date-of-birth field and at the bottom, correct?

20 A. Yes.

21 Q. And is this something that would fall within that
22 exception we discussed earlier?

23 A. I suppose it could, yes.

24 Q. And this is the voter's registration form, correct?

25 A. Yes.

1 Q. And, here, it appears her birthdate is 11-13, 1994?

2 A. Yes.

3 Q. And do you -- do you know if the Board voted with
4 respect to this particular ballot?

5 A. I do not believe they did, no.

6 Q. Now, with absentees, voters have already filled out the
7 date-of-birth field once prior to receiving an absentee ballot,
8 correct?

9 A. Yes.

10 Q. In fact, they're required to fill it out correctly in
11 order to receive that ballot?

12 A. Yes.

13 Q. And do you think it's fair that voters are having their
14 ballots rejected for failing to fill out the date-of-birth
15 field on absentee ballot envelopes?

16 A. I don't know that I can answer that. The ID envelope,
17 when it returns, we have to be able to determine that the voter
18 cast the ballot. So, in that -- in that case, if a date of
19 birth can help us determine if that was the voter who cast it,
20 I -- I understand the requirement. I don't know that I can
21 speak to its fairness.

22 If we can otherwise determine the voter cast that ballot
23 and filled that form out, then, no, I don't believe it's fair.

24 Q. Okay. So, in this particular case, your office writes
25 in the name and the address, or has it printed, correct?

1 A. Yes, correct.

2 Q. And you have that voter's driver's license, correct?

3 A. Yes.

4 Q. And you have their signature, correct?

5 A. Yes.

6 Q. And if you look back at the application, the name,
7 address -- the name appears to be the same, correct?

8 A. Yes.

9 Q. The address appears to be the same, correct?

10 A. Yes.

11 Q. The driver's license number appears to be the same,
12 correct?

13 A. Yes.

14 Q. And the signature appears to be the same, correct?

15 A. Yes.

16 Q. So do you believe you're able to identify this voter
17 without that information?

18 A. Yes.

19 MS. CRAWFORD: Thank you.

20 Your Honor, could I have a minute to confer with
21 counsel?

22 THE COURT: Yes, you may.

23 MS. CRAWFORD: Thank you.

24 (Whereupon, there was a brief interruption.)

25 MS. CRAWFORD: No further questions at this time.

1 Thank you, Ms. Bucaro.

2 THE WITNESS: Okay.

3 THE COURT: Thank you, Ms. Crawford.

4 Mr. Conover, cross? I mean -- You're direct, actually.

5 MR. CONOVER: Thank you.

6 DIRECT EXAMINATION

7 BY MR. CONOVER:

8 Q. Good morning, Ms. Bucaro. Thank you for being here.

9 And I know that we've previously met; but, just for the record,
10 my name is Brodi Conover. I'm from the Ohio Attorney General's
11 Office and represent the Defendants Secretary of State and the
12 State of Ohio in this case.

13 I'd like to kind of just track Ms. Crawford's
14 questioning a little bit and to cover a little bit more for
15 you.

16 So, what is the population of Butler County?

17 A. I believe it's around 380,000.

18 Q. And do you know --

19 THE COURT: What's the county seat?

20 THE WITNESS: Hamilton.

21 THE COURT: Hamilton, Ohio, is the county seat?

22 THE WITNESS: Uh-huh.

23 BY MR. CONOVER:

24 Q. And how many registered voters are there in Butler
25 County?

1 A. Currently, 237,000.

2 Q. And do you know how these numbers compare relative to
3 other counties in the State?

4 A. We're the eighth largest county in the State.

5 Q. Thank you. And are you a member of a political party,
6 Ms. Bucaro?

7 A. I am.

8 Q. And which party is that?

9 A. Democrat.

10 Q. And do you hold any positions in the Butler County
11 Democratic Party?

12 A. I do.

13 Q. And what position is that?

14 A. Chair. I'm the Chairwoman.

15 Q. Thank you. And can you describe your role as the
16 Chairwoman of the Butler County Democratic Party?

17 A. I help recruit candidates and help to support them.

18 Q. Thank you. And do you know what a superdelegate is?

19 A. Yes.

20 Q. And what is that?

21 A. It's a, in the Democrat National Committee, an unpledged
22 delegate to the National Convention.

23 Q. Thank you. And can you describe the difference in your
24 role as Deputy Director of the Butler County Democratic Party,
25 or -- excuse me -- Butler County Board of Elections and the

1 Chairwoman of the Butler County Democratic Party?

2 A. Sure. I do not wear a party hat as Deputy Director of
3 the Board of Elections in any sort of partisan way. We operate
4 to serve the voters, all the voters of the County. And when
5 I'm Chairwoman of the Democratic Party, I'm serving the members
6 of the Party and Democratic voters in the County.

7 Q. Thank you. What is the Ohio Association of Election
8 Officials?

9 A. It's -- It's the lobbying organization of election
10 officials in the State of Ohio.

11 Q. And can you just briefly describe the structure of the
12 OAEO?

13 A. Sure. There are three officers -- four officers and a
14 Board of Trustees. And we have an Executive Director.

15 Q. And are you an active member of the OAEO?

16 A. I am.

17 Q. What positions do you hold?

18 A. Currently, the Second Vice-President. And I'm also on
19 the Legislative Committee.

20 Q. Thank you. I'd now like to move into the voting, kind
21 of, apparatus in Butler County. And I'd first like to start
22 with the DRE machines that you all use. And I believe that
23 you've mentioned on your cross that an early voter -- an early
24 in-person absentee voter would vote via a DRE machine?

25 A. Correct.

1 Q. And are votes on DRE machines counted immediately?

2 A. No.

3 Q. And how is that information, that ballot information,
4 stored on the DRE machine?

5 A. They're cast in early voting as a provisional vote,
6 meaning we do not accept them until after early voting, or,
7 until after the polls close and early voting has closed on
8 Election Day -- on Election Day. In that way, we are able to
9 go and identify a vote; not see the ballot or see how a voter
10 voted, but identify a vote if a voter is determined to be
11 ineligible for the election.

12 Q. And I think you described that a voter like this would
13 fill out an application, but would not fill out the absentee
14 envelope?

15 A. Correct.

16 Q. And what, if any, risk is there that another individual
17 would vote that person's vote on the DRE machine?

18 A. Very little. The voter still has to complete the
19 application, and that information is verified before they're
20 given their ballot.

21 Q. Thank you. What precinct should a voter vote in?

22 A. Their home precinct where they currently reside.

23 Q. And I think you mentioned that you often search
24 different databases to confirm a voter's identity, what their
25 address or their date of birth or one of their ID requirements

1 is, right?

2 A. Yes.

3 Q. And why do you search different databases?

4 A. To ensure the information we have is correct in our
5 system.

6 Q. And I think you also mentioned that you check to make
7 sure that a voter has only voted one ballot, especially in the
8 provisional context?

9 A. Yes.

10 Q. And why do you do that?

11 A. Because the voter is only eligible to vote once.

12 Q. And I realize I'm kind of all over the place. So I
13 apologize.

14 A. That's okay.

15 Q. It's just following my notes. But when a voter
16 registers, you mentioned that there is an option to give a
17 phone number or an e-mail address?

18 A. Yes.

19 Q. Is that required?

20 A. No.

21 Q. So, do you have a phone number for every registered
22 voter in Butler County?

23 A. No.

24 Q. Do you have an e-mail address for every registered voter
25 in Butler County?

1 A. No.

2 Q. So, I think Ms. Crawford also showed you two different
3 absentee identification envelopes, one from the beginning of
4 the 2014 election and one, kind of, that you changed in the
5 middle; is that correct?

6 A. Correct.

7 Q. And are those forms proscribed by the Secretary of
8 State?

9 A. They follow a form proscribed by the Secretary of State.
10 We do have the form we use currently reviewed by the Secretary
11 of State to ensure it meets their requirements.

12 Q. But the absentee form that you use is specific to Butler
13 County, correct?

14 A. Yes.

15 Q. Thank you. And I think Ms. Crawford asked you about
16 when you're mailing out 11-S forms up to the sixth day after
17 the election. Is it required that a voter send in the 11-S
18 form via mail?

19 A. No.

20 Q. So a voter could drop off an 11-S form?

21 A. Yes.

22 Q. And Ms. Crawford also asked you a little bit about
23 literacy. Does any form require some level of literacy?

24 A. Yes.

25 Q. And what does the Board do to assist either low literate

1 or illiterate voters?

2 A. If a voter is in our office and requires assistance, we
3 can provide it. If a voter requires assistance at a polling
4 location, two precinct election officials of opposite party are
5 permitted to assist a voter.

6 Q. Do you know where the authority comes from for that
7 assistance?

8 A. From the Ohio Revised Code.

9 Q. Thank you. And is it possible that family members could
10 assist the voter?

11 A. Yes.

12 Q. And I think on your cross you mentioned that Butler
13 County has used electronic poll books since 2012?

14 A. Correct.

15 Q. And do those poll books consolidate the poll books in
16 Butler County?

17 A. Yes.

18 Q. And can you just kind of describe the process for a
19 voter, when they walk into the polling location, how they would
20 engage with the electronic poll book?

21 A. Sure. The poll books are connected to one another via
22 network cables. So, a voter can check in at any electronic
23 poll book in a polling location. With the exception, I
24 believe, of two polling locations in Butler County, all of our
25 locations have multiple precincts. So, voters do not have to

1 know what precinct they belong to to check in at our polling
2 locations.

3 And the poll-workers would then ask the voter for their
4 name and current address and look them up by their name and
5 then verify their address and their ID with the voter at
6 the -- on the ePoll book.

7 Q. And has that had any benefit on election administration
8 in Butler County?

9 A. Yes.

10 Q. And what benefits have those had?

11 A. Well, it helps the voters, because they don't have to
12 know their precinct. Very few voters know what precinct they
13 live in.

14 It helps to identify what precinct a voter should vote
15 in for a provisional ballot to ensure they vote in the right
16 precinct and polling location.

17 It can provide the voter with a receipt with their
18 correct polling location address at the polls on Election Day.

19 And, then, it vastly reduces the amount of staff time,
20 required both before an election and after an election, in
21 preparing the poll books for the polling locations, updating
22 with absentee voter information, and then uploading our voter
23 history and helping us speed up our provisional processing
24 after the election.

25 Q. And I'm now going to go back to provisionals. I know I

1 was just there. So I apologize for coming back to it. And you
2 described a process where the precinct election officials are
3 required to check the form for completeness and initial; is
4 that right?

5 A. Yes.

6 Q. And are you required to have your precinct election
7 officials do that?

8 A. No, although I believe the Secretary of State's training
9 for precinct election officials does highly recommend it.

10 Q. Okay. Thank you. And, then, I believe, also,
11 actually -- Strike that.

12 With a provisional ballot, what purpose does a
13 provisional ballot have for a non-registered voter?

14 A. For a non-registered voter, it would register them.

15 Q. And was that true for provisional ballot affirmation
16 forms prior to 2014?

17 A. It was true for provisional ballot affirmation forms
18 that contained the registration criteria on the back of the
19 former form that was used before 2014.

20 Q. So was it a separate form, then?

21 A. The form used previously had two sides. On the reverse
22 side was basically a registration form, and voters were asked
23 to complete that if they needed to update information. We had
24 previously instructed our poll-workers to ask all voters voting
25 provisionally to complete that form.

1 Q. But were they required to fill that form out?

2 A. No. No.

3 Q. So their vote wouldn't have been rejected?

4 A. In most cases, no.

5 Q. Okay. Thank you.

6 I'd now just like to go over a couple of the exhibits
7 that Ms. Crawford showed you. And I'm going to start with
8 3925, which I believe was the 2014 absentee certification; is
9 that right?

10 A. Yes.

11 Q. And, here, in Section B, how many -- in 2014, how many
12 absentee ballots were counted in Butler County?

13 A. 20,200.

14 Q. I should specify the domestic civilian ballots.

15 A. Okay. 20,297 were counted.

16 Q. And how many were rejected?

17 A. 449.

18 Q. And, looking at the bottom here, what was the most
19 common reason for rejecting a provisional ballot in 2014 -- or
20 an absentee ballot in 2014?

21 A. Ballots not received on time.

22 Q. And then, also, what was -- The reason given in C11, how
23 many were rejected for that reason?

24 A. Three.

25 Q. And what is the reason that those were rejected?

1 A. The voter was deceased prior to the date the ballot was
2 cast.

3 Q. And now I'd like to bring up Plaintiffs' Exhibit 3927
4 which I believe was the 2015 version of that form. And how
5 many domestic civilian ballots were counted in 2015?

6 A. 8,973.

7 Q. And how many were rejected?

8 A. 144.

9 Q. And what was the most common reason for rejection?

10 A. Ballots not timely received.

11 Q. And how many were --

12 A. 92.

13 Q. Thank you. Now I'd like to bring up Plaintiffs' Exhibit
14 3926. And what is this form?

15 A. The Official Certification for Provisional Ballots Cast
16 in the November 2014 Election.

17 Q. Thank you. And how many provisional ballots were
18 counted in full in 2014?

19 A. 1,242.

20 Q. And how many were rejected?

21 A. 117.

22 Q. And what was the most common reason for rejection?

23 A. Voters not registered.

24 Q. And how many?

25 A. 81.

1 Q. I'd also like to --

2 THE COURT: And, just for clarity in the record,
3 that's voter not registered in the State.

4 THE WITNESS: Yes.

5 THE COURT: Is that right?

6 THE WITNESS: Yes.

7 THE COURT: Because if the voter was -- if it was the
8 right church/wrong pew --

9 THE WITNESS: Right.

10 THE COURT: -- you would have counted that provisional
11 ballot; is that right?

12 THE WITNESS: Yes.

13 THE COURT: So, what your Board did was to confirm
14 that there was no voter in that state registered by that
15 particular name --

16 THE WITNESS: Correct.

17 THE COURT: -- before that ballot was not counted?

18 THE WITNESS: Yes.

19 THE COURT: If the voter was registered in some other
20 precinct --

21 THE WITNESS: Yes.

22 THE COURT: -- the provisional ballot was counted?

23 THE WITNESS: If all other requirements were met, yes.
24 Correct.

25 THE COURT: Okay. Okay. So B1 doesn't cover right

1 church/wrong pew?

2 THE WITNESS: No. That only -- That only covers a
3 voter we did not identify as having been registered anywhere in
4 the State of Ohio before.

5 THE COURT: So, a right church/wrong pew provisional
6 ballot could be discounted if the other fields are not properly
7 completed?

8 THE WITNESS: Yes.

9 THE COURT: Please continue, Mr. Conover.

10 MR. CONOVER: Thank you, Your Honor.

11 BY MR. CONOVER:

12 Q. And what is the rejection reason listed in B10?

13 A. The voter had already voted.

14 Q. And what does that mean?

15 A. In most of those cases, it would have meant the voter
16 cast an absentee ballot.

17 Q. Okay. Thank you. How many were rejected for that
18 reason?

19 A. Nine.

20 Q. Thank you. And, then, finally --

21 THE COURT: Just one followup question to that --

22 THE WITNESS: Uh-huh.

23 THE COURT: -- just out of curiosity.

24 So, if a provisional ballot is found -- if a provisional
25 ballot voter also is found to have cast an absentee ballot,

1 that provisional ballot is not counted, correct?

2 THE WITNESS: Correct.

3 THE COURT: Is that absentee ballot then pulled and
4 not counted?

5 THE WITNESS: No. That would have been counted.

6 THE COURT: That would have been counted?

7 THE WITNESS: Yes.

8 THE COURT: So the voter is not disenfranchised?

9 THE WITNESS: Correct.

10 THE COURT: Please continue, Mr. Conover.

11 MR. CONOVER: Thank you, Your Honor.

12 BY MR. CONOVER:

13 Q. And, finally, Plaintiffs' Exhibit 3928, this is the 2015
14 provisional certification?

15 A. Yes.

16 Q. And, in 2015, how many provisional ballots in Butler
17 County were counted in full?

18 A. 2,029.

19 Q. And how many were rejected?

20 A. 344.

21 Q. And what was the most common reason for a provisional
22 ballot being rejected in 2015?

23 A. Voter not registered in the State of Ohio.

24 Q. And how many were rejected for that reason?

25 A. 295.

1 Q. And, again, B10 was the voter already voted, correct?

2 A. Yes.

3 Q. And how many were rejected for that reason?

4 A. Seven.

5 Q. Thank you.

6 THE COURT: Put that back up for a moment, please, Mr.
7 Conover.

8 MR. CONOVER: Yes, Your Honor.

9 THE COURT: Under B6, 17 were rejected because the
10 voter failed to provide current address?

11 THE WITNESS: Yes.

12 THE COURT: And that meant that the Board had searched
13 the database to determine whether there was any available
14 address for the voter and found none; is that right?

15 THE WITNESS: Not in every case. In some of those
16 cases, the voter did not complete the address field at all,
17 didn't give us any address in that field in some of those
18 cases. In others, the voter didn't provide a house number or
19 not a complete house number or we weren't able to, as you said,
20 find the address in any of our databases.

21 THE COURT: In those instances, were you otherwise
22 able to identify the voter, let's say by name or signature?

23 THE WITNESS: We may have been, yes.

24 THE COURT: And even if you were able, otherwise, to
25 identify that voter by name or signature, his or her ballot was

1 not counted because the address was improper?

2 THE WITNESS: Correct.

3 THE COURT: That also means that you had determined,
4 from looking at the provisional ballot, that the voter was
5 registered in the State?

6 THE WITNESS: Yes.

7 THE COURT: Please continue, Mr. Conover.

8 MR. CONOVER: Thank you, Your Honor.

9 BY MR. CONOVER:

10 Q. I'd next just like to ask a few questions about, kind
11 of, the Board review on the back end.

12 What is currently going on at the Board of Elections in
13 Butler County?

14 A. We're reviewing provisional ballots cast in the March
15 15th primary.

16 Q. Thank you. And who ultimately makes the decision to
17 accept or reject provisional and absentee ballots?

18 A. The Board of Elections.

19 Q. Is that a bipartisan process?

20 A. Yes.

21 Q. And can you just briefly explain that process?

22 A. We have two Democrat Board members and two Republican
23 Board members, and they have to agree by a vote of at least
24 three members to approve or not approve all provisional
25 ballots.

1 Q. And I think on your cross you mentioned that the Board
2 does look through individual envelopes?

3 A. Yes.

4 Q. And why does the Board do that?

5 A. Our Board -- All of our Board members, regardless of
6 party affiliation, want to count any eligible voter's vote.
7 And they -- we generally hold our poll-workers responsible if a
8 voter's vote does not count. So they often want to see how our
9 poll-workers have done in terms of reviewing these envelopes.
10 They also want to see if there is any way we can, under the
11 directive, count any of these ballots.

12 MR. CONOVER: Just a quick moment, Your Honor, to
13 confer?

14 THE COURT: All right.

15 (Whereupon, there was a brief interruption.)

16 THE COURT: May I ask you one other question? I just
17 don't know the answer to this.

18 What happens if there is a two-two tie?

19 THE WITNESS: It would go to the Secretary of State to
20 break the tie.

21 THE COURT: Is there any field on this exhibit, which
22 is on the monitor now --

23 What's that exhibit number, Mr. Conover, the one that's
24 on the screen right now?

25 MR. CONOVER: Oh, there is one on the screen.

1 THE COURT: Yes, there is.

2 MR. CONOVER: 3928, Your Honor.

3 THE COURT: All right. Is there a field that shows
4 how many tie votes you had that were sent to the Secretary?

5 THE WITNESS: We had none.

6 THE COURT: You had none?

7 THE WITNESS: Correct.

8 THE COURT: Was the poll-worker tasked with the
9 responsibility of ensuring that the fields on the provisional
10 ballot were adequately completed?

11 THE WITNESS: Yes.

12 THE COURT: So, why wasn't it the poll-worker's
13 responsibility in those 17 instances where there was, like, an
14 incomplete address or inadequate address, why wasn't the
15 poll-worker responsible then?

16 THE WITNESS: Well, if the address doesn't exist in
17 our databases, we don't expect our poll-workers to know that
18 information. But we would -- we would hold the poll-workers
19 responsible if the voter did not complete -- give us any
20 address or give us an incomplete address, because --

21 THE COURT: Okay. So, these 17, then, are not
22 incomplete addresses?

23 THE WITNESS: They could be. That would include
24 incomplete addresses.

25 THE COURT: All right. I'm confused now.

1 THE WITNESS: Okay.

2 THE COURT: So the poll-worker is responsible if there
3 is an incomplete address?

4 THE WITNESS: Yes.

5 THE COURT: If there's an incomplete address that gets
6 to the Board, the Board rejects that ballot even though it was
7 the poll-worker's fault?

8 THE WITNESS: We hold the poll-worker responsible for
9 reviewing the envelope for completion. Ultimately, it is the
10 voter's responsibility to complete the form; but we know, you
11 know, that it's -- it's a long form. And we want our -- we
12 want our voters' votes to count. So we ask our poll-workers
13 and hold our poll-workers accountable for making sure that the
14 voter completed every required field. And we train them for
15 that.

16 THE COURT: All right. I'm still unclear, and I think
17 that maybe, if I ask a couple more questions, you can provide
18 clarity.

19 THE WITNESS: Okay.

20 THE COURT: If the poll-worker is responsible for
21 making sure that the voter provides a complete address and an
22 incomplete address on a provisional ballot leads to that
23 provisional ballot being rejected, then, how is the poll-worker
24 being held responsible if the end result is that the voter's
25 vote is not cast?

1 THE WITNESS: Well, the voter's vote would not be
2 cast. And we, in all likelihood, would not ask that
3 poll-worker to work again.

4 THE COURT: But there is no relief for that
5 disenfranchised voter?

6 THE WITNESS: That's correct.

7 THE COURT: Do you know the degree of frequency with
8 which you have those incomplete addresses?

9 THE WITNESS: It has been significantly reduced since
10 we started training and, really, holding our poll-workers
11 accountable for this. It's gone down, but it's not eliminated.
12 And that's frustrating.

13 THE COURT: Please continue, Mr. Conover.

14 MR. CONOVER: I have no further questions, Your Honor,
15 at this time.

16 THE COURT: Okay.

17 Ms. Crawford, do you have any recross?

18 MS. CRAWFORD: Yes, I do, Your Honor.

19 THE COURT: Do you have much recross, Ms. Crawford?

20 MS. CRAWFORD: No.

21 THE COURT: I don't care how much you have. I'm just
22 trying to determine whether to take our morning recess, now
23 that it's 10:30. If you had one or two questions -- and I mean
24 one or two questions mathematically speaking, as opposed to --

25 MS. CRAWFORD: It would be more than one or two

1 questions.

2 THE COURT: All right. We're going to take a
3 10-minute recess now. We'll stand in recess until 10:40.

4 (Recess taken from 10:30 a.m. until 10:40 a.m.)

5 THE COURT: Please proceed, Ms. Crawford.

6 MS. CRAWFORD: Thank you, Your Honor.

7 RECROSS-EXAMINATION

8 BY MS. CRAWFORD:

9 Q. Now, Ms. Bucaro, you talked a little bit about voter
10 assistance. When you say you can assist a voter when they
11 require assistance, doesn't that mean the voter needs to
12 request assistance?

13 A. Yes.

14 Q. And a voter would need to know he or she needs
15 assistance, correct?

16 A. Yes.

17 Q. So, we've showed you a few instances where there are
18 small errors on forms, correct?

19 A. Yes.

20 Q. And is it fair to say that some of these voters whose
21 ballots were rejected didn't know that they needed assistance?

22 MR. CONOVER: Objection, Your Honor.

23 THE COURT: Sustained.

24 MR. CONOVER: Thank you.

25 MS. CRAWFORD: Thank you, Your Honor.

1 BY MS. CRAWFORD:

2 Q. You also discussed the process of voter credit. When
3 does the voter receive credit for voting?

4 MR. CONOVER: Objection, Your Honor.

5 THE COURT: Overruled.

6 THE WITNESS: Voter history?

7 BY MS. CRAWFORD:

8 Q. Yes, I'm sorry. I understand that's the other name for
9 it.

10 A. Yeah. It's given immediately after Election Day for all
11 voters who voted on Election Day and whose votes were counted.
12 And then it's updated, after we complete the official
13 certification of the election, for any voters whose votes were
14 counted after Election Day.

15 Q. Does a voter receive credit for voting, or put into
16 their history, even if that voter's vote was not counted?

17 MR. CONOVER: Objection. Outside the scope, Your
18 Honor.

19 THE COURT: Sustained.

20 MR. CONOVER: Thank you, Your Honor.

21 BY MS. CRAWFORD:

22 Q. Now, you testified that you understand there are reasons
23 that these additional fields, address and date of birth, make
24 it more convenient to the Board, correct?

25 A. Yes.

1 Q. But because these fields aren't filled out, that isn't a
2 reason to reject the ballot, correct?

3 A. Not if we can determine the voter through other means.

4 Q. Okay. And you also testified that the Board wants votes
5 to be counted, correct?

6 A. Correct.

7 Q. But they're only able to count these ballots if
8 permitted to do so under law and directive, correct?

9 A. Correct.

10 MS. CRAWFORD: Thank you.

11 No further questions, Your Honor.

12 THE COURT: Any redirect, Mr. Conover?

13 MR. CONOVER: No, Your Honor.

14 THE COURT: Ms. Bucaro, thank you very much, ma'am.
15 You may be excused.

16 THE WITNESS: Thank you.

17 THE COURT: Your next witness, Mr. Chandra?

18 MR. CHANDRA: Your Honor, we will call State Senator
19 Nina Turner.

20 THE COURT: Okay.

21 Senator Turner, please come forward and be sworn.

22 THE WITNESS: Thank you, Your Honor.

23 - - -

24 NINA TURNER,

25 AFTER HAVING BEEN DULY SWORN, TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION

BY MR. CHANDRA:

Q. Could you please state your name for the record?

A. My name is Nina Turner.

Q. Could you please spell your first name?

A. N-i-n-a.

Q. Please tell the Court a little bit about your educational background?

A. Well, I am a resident of Cleveland, born and raised in Cleveland, received all of my higher education degrees, starting at Cuyahoga Community College and then Cleveland State University, where I earned a bachelor's and a master's degree in history.

Q. Both degrees were in the subject of history?

A. Yes.

Q. Was there a particular focus in your history curriculum?

A. Yes. I am currently a tenured professor at Cuyahoga Community College, and I teach African American and U.S. history.

Q. Okay. We'll come back to that.

A. Okay.

Q. I was just focused on the educational background first.

A. Yes.

Q. So was there a particular focus within history in your educational curriculum as a student?

1 A. Yes. For my master's degree, African-American history,
2 with a specific focus on the 20th century.

3 Q. Did you write a master's thesis as part of that
4 education?

5 A. Yes.

6 Q. What was the subject?

7 A. It was L. Pearl Mitchell and the NAACP.

8 Q. And what about that?

9 A. The fight for equality in the NAACP and, really, the
10 role that she played as an African-American woman. And women
11 are often left out of that history.

12 Q. And after your education, what did you start to do
13 professionally? Have we completed your educational
14 credentials?

15 A. Yes. Yes.

16 Q. Okay. Nothing else to add?

17 A. No.

18 Q. So, after your education, could you please tell the
19 Court about your career as it developed; go over the course of
20 your resume?

21 A. I was a legislative service commission intern for the
22 Statehouse once I graduated with my master's degree. So, I
23 spent almost two years in the Legislature as an intern -- well,
24 less than two years as an intern. And then I was hired by
25 then-Senator Rhine McLin to be a legislative aide for her in

1 the Senate. And, after that, I went back to --

2 Q. If you could slow down a little bit. Give us a sense of
3 the time frames involved for that kind of work.

4 A. This was in the late '90s, latter part of the '90s. I
5 worked for Senator Rhine McLin of Dayton at the time.

6 Q. Okay. And what were your duties?

7 A. First I started off as a fellow, or intern, as they
8 called it when I was there, but now we're fellows. And I would
9 handle constituency work.

10 And then, later, before my internship actually ended,
11 the Senator hired me to be a legislative aide. So, I helped
12 write policies and took constituent concerns and complaints and
13 traveled to the district, those types of things.

14 Q. And Senator McLin was from where?

15 A. Senator McLin was from Dayton, Ohio.

16 Q. Montgomery County?

17 A. Montgomery County, yes.

18 Q. Let's start with your responsibilities with
19 constituents. What sorts of issues did you work on when
20 dealing with constituents of Senator McLin from Dayton?

21 A. Anything from education policy and concerns. We had
22 some voting concerns. From time to time, constituents would
23 call to find out about the rules of voting or ask questions.

24 Constituents would often have legislative ideas that
25 they wanted the Senator to push forward. Senator McLin, at the

1 time, was also -- I believe she was the chair of the -- There
2 was a prison panel that the Legislature had, as well. And, so,
3 she was either the chair or co-chair of that panel. So, we did
4 lots of work with the re-entry community, the prison
5 population, as well.

6 Q. Is Senator McLin African American?

7 A. Senator McLin is African American.

8 Q. And what was the nature of the constituency that she was
9 representing?

10 A. She had a mixed constituency; but, primarily, in the
11 Dayton area, mainly African Americans.

12 Q. And, so, after completing that constituency work, tell
13 us about the policy-related work that you did for Senator
14 McLin?

15 A. Well, her focus was certainly the prison industry,
16 primarily. She cared a great deal about education, as well.
17 So we worked on those policies.

18 In 1999, or in the late '90s -- I might not have the
19 years exactly right, but that was really when the DeRolph case
20 came down. I remember that kind of being the highlight of my
21 career, being in the Legislature when the courts determined
22 that the way that we fund education in the State of Ohio is
23 unconstitutional because of our overreliance on property taxes.
24 And Senator McLin played a really strong role in that. She was
25 also a member of the controlling board, as well.

1 So those are the kinds of issues that we worked on.

2 Q. Drilling down a little deeper into the education-policy
3 issues, what sorts of education-policy issues, besides working
4 on the DeRolph case and the issue of funding of districts, did
5 you work on for Senator McLin in the General Assembly?

6 A. Well, in terms of budgets, the Senator was always
7 concerned about whether or not the Legislature was putting
8 forth requisite funding to make sure that education was funded
9 properly. This was even before DeRolph, but those issues were
10 very important to her.

11 Q. During the course of your work, would you review
12 statistical information about the performance of schools?

13 A. Yes, but I don't remember -- That was a long time ago.
14 So I don't remember any of the details in that.

15 Q. Did you wind up reviewing any information related to
16 literacy rates around the State?

17 A. For Senator McLin, probably; but I don't remember any of
18 the details from that time period.

19 Q. Okay. So if you could please progress forward in your
20 career. Anything more to add about the work you did for
21 Senator McLin?

22 A. No.

23 Q. Okay. If you could continue forward to the rest of your
24 career.

25 A. I went on to work for then-Mayor Michael R. White as a

1 legislative aide for him for the City of Cleveland. Mayor
2 White was the second African American elected in the City of
3 Cleveland to be mayor, with the Honorable Carl B. Stokes being
4 the first.

5 So I went on to work for him as a legislative aide, and,
6 then, about eight months into my service with him was elevated,
7 or promoted, if you will, to be a member of his cabinet. So I
8 became the executive assistant for legislative affairs. And,
9 in that role, my job was to deal with the City Council, solely,
10 with the mayor and his legislative priorities.

11 Q. Could you please explain, both with respect to your role
12 as a legislative aide and then the promotion to be executive
13 assistant to the mayor, what kinds of duties you had?

14 A. Well, my role as a legislative aide, I worked for a
15 cabinet member. And so my job was to be in the Council
16 Committee, taking the notes, pushing for the mayor's policies
17 to be presented. Unlike on the State level, where most
18 legislation that is put forward in the Legislature comes from
19 members of the General Assembly, on the local level, at least
20 in the City of Cleveland, most of the legislation that the
21 council hears is really started by the departments. There are
22 about 14 city departments in the City of Cleveland, anything
23 from the Department of Safety to the Water Department. Most of
24 that legislation originated on the administrative side of the
25 House. So, it's definitely the opposite of what happens on the

1 State level.

2 So my job was to work with the executive assistant for
3 City Council to make sure that any of the concerns that the
4 Council had, to lobby and to make sure that the mayor's
5 priorities were intact. That's what I did, primarily.

6 Q. Actually, I need to go back to one thing from the
7 Senator McLin era.

8 A. Sure.

9 Q. You mentioned the DeRolph decision and funding for
10 schools. Could you describe for the Court what was the central
11 issue in the DeRolph case with regard to equal funding?

12 A. If my memory serves me correctly, the central issue was
13 that the way that we fund education in the State of Ohio is
14 unconstitutional because of the overreliance on property taxes.
15 And, so, those young folks who have the benefit of living in a
16 city where the property taxes are rich -- where they're
17 wealthier, the tax base is wealthier in terms of property, we
18 spend more money. And then in cities, and/or even our rural
19 counties, as well, in places where the property base is not as
20 robust, then those students are denied the ability to have the
21 same level of funding.

22 And, basically, the Ohio Supreme Court said, very
23 clearly, that the way that we fund education in the State of
24 Ohio is unconstitutional because of that, because it allows for
25 people who live in wealthier areas to have more money given

1 towards education. And -- well, we didn't get to my service in
2 the Legislature, but a lot of that still overlapped in my time
3 in serving in the General Assembly.

4 Q. So, we'll come to that, but --

5 THE COURT: Just a second.

6 MS. RICHARDSON: Objection, Your Honor, just in terms
7 of relevance.

8 MR. CHANDRA: If I could have a side-bar to explain?

9 THE COURT: Yes.

10 (Thereupon, the following proceeding was held at side-bar.)

11 THE COURT: Go ahead, Mr. Chandra.

12 MR. CHANDRA: So, I'm laying a foundation for her
13 subsequent testimony about the Senate Factors. And one of the
14 Senate Factors deals with issues of disparity, by race, with
15 regard to education, poverty and health issues. So she will be
16 very familiar with these kinds of disparities at the State
17 level from her policy work. And I'd like her to be able to
18 establish that before she starts responding to questions about
19 the Senate Factors and her personal knowledge of the
20 application of those factors.

21 THE COURT: Is the senator a lawyer?

22 MR. CHANDRA: She is not.

23 THE COURT: Okay.

24 MR. CHANDRA: But I won't be asking her for legal
25 conclusions. I'll be asking her for facts of what she is

1 aware.

2 THE COURT: You mean you won't be asking her for any
3 more legal conclusions, because what she just explained to me
4 is what the State Supreme Court did in the school funding case.
5 She kind of gave me the whole rationale. And I don't know that
6 there is a basis for that.

7 And I don't know the fact that the Supreme Court has
8 said that the State funding school system is unfair necessarily
9 raises the inference that the voters who participated in the
10 educational system that was unfairly funded are somehow not as
11 well educated.

12 MR. CHANDRA: That's what I was coming to next, about
13 her policy understanding of that from the work she did, from
14 the review she did, any -- you know, what was her understanding
15 of that and what was the basis for it.

16 So I didn't control her answer, obviously, in terms of
17 her legal --

18 THE COURT: Right. But my point, Mr. Chandra, is
19 this: This is far afield. And I agree with Ms. Richardson,
20 that is irrelevant, or I should say is not relevant. And so
21 I'm going to sustain the objection to the last question and
22 answer because, you know, with her work in the field and
23 whatnot, she could still, you know, I think, get to the same
24 place that you're trying to get to without establishing what
25 she knows about State -- the adequacy of State funding of, you

1 know, education throughout the State. I mean, it's been an
2 ongoing battle and ongoing issue. There have been
3 numerous -- even with that case, there have been numerous
4 Supreme Court cases, as you know, that address that issue. And
5 I don't want -- I don't want to chase red herrings.

6 MR. CHANDRA: That's fair, Your Honor. If I could get
7 a little bit of guidance, though, just because -- I agree with
8 the Court that that's really not where I was headed with it.

9 THE COURT: Okay.

10 MR. CHANDRA: But what I wanted to be able to do is
11 see if she has personal knowledge to ward off future objections
12 as we get to the Senate Factors, about her knowledge, then, of
13 racial disparities in the educational system and what impact
14 those might have. So that was really the only reason, was a
15 foundational question for her policy work and knowledge, not
16 for the substance of the answer, at all.

17 MS. RICHARDSON: Your Honor, may I respond?

18 THE COURT: Yes, please.

19 MS. RICHARDSON: In addition to the relevance
20 objection, I also think we're starting to get into areas where
21 she would be giving opinions that are outside the scope of a
22 lay opinion. She has not been designated as an expert in this
23 case.

24 MR. CHANDRA: It's all based on her personal knowledge
25 and familiarity with the issues.

1 THE COURT: Let's get to her personal knowledge and
2 familiarity. But I don't want to be so circuitous in doing so.
3 Let's get the record in, because she does have some rich
4 experiences and she is familiar -- she could be familiar from
5 committees that she served on, from -- it could be a whole host
6 of things. I don't know.

7 MR. CHANDRA: That wasn't the answer I was fishing
8 for.

9 THE COURT: I understand. But, you know, craft your
10 questions so you can get the answers that you need. But I just
11 don't want us to go circuitously.

12 MR. CHANDRA: Absolutely.

13 THE COURT: Thank you.

14 (The following proceedings were had in open court.)

15 BY MR. CHANDRA:

16 Q. Senator Turner --

17 THE COURT: Please continue, Mr. Chandra.

18 MR. CHANDRA: Thank you, Your Honor.

19 BY MR. CHANDRA:

20 Q. Senator Turner, from your work on educational policy
21 issues in the General Assembly, did you become familiar with
22 information concerning disparities by race in education in
23 Ohio?

24 A. Yes.

25 Q. And what sorts of information do you recall with respect

1 to that topic?

2 A. Only in reference to my time with Senator McLin, or just
3 in general?

4 Q. Right now, we're just focused on your time with Senator
5 McLin.

6 A. I mean, there was always, for the Senator's perspective,
7 always this epic battle to ensure that students in urban
8 centers, in particular, had the requisite investments in
9 education.

10 Q. And, then, what information did you -- what knowledge
11 did you gain about the extent to which there are racial
12 disparities in education in Ohio?

13 A. That in urban areas, typically, in terms of tax levies,
14 in particular, if the State is not taking up -- really, what I
15 gained from that experience, and also the DeRolph experience,
16 is that, if the State is not paying for the lion's share of the
17 educational pursuits of young people in the State and the other
18 portion of it falls to local governments, students, depending
19 on where they live and how property rich their communities are,
20 may not receive the same type of funding.

21 And, so, in urban areas like a Dayton, Ohio, or like
22 Cleveland, where I live, we typically find that students who
23 live in those areas do not have the same level of funding. And
24 that was really the crux of the DeRolph decision.

25 Q. Beyond funding, however, did you also gain information

1 about educational outcomes, by race, across the State?

2 A. Yes. Yes. There is an achievement gap, you know, in
3 the State and in this country. The gap is very wide between
4 African Americans and white students, and also Latino students,
5 as well. And that gap is still in full effect, unfortunately,
6 today.

7 Q. And from your policy study, did you draw a conclusion
8 about the factors that led to that achievement gap?

9 MS. RICHARDSON: Objection.

10 THE COURT: Sustained.

11 MS. RICHARDSON: Thank you, Your Honor.

12 BY MR. CHANDRA:

13 Q. From your policy study, did you formulate a belief about
14 the factors that led to that racial achievement gap?

15 MS. RICHARDSON: Objection. Same objection, Your
16 Honor.

17 THE COURT: Ms. Turner, did you undertake any specific
18 policy studies relating to what Mr. Chandra has denominated the
19 achievement gap?

20 THE WITNESS: Well, Your Honor, in my readings, not
21 just as an legislative aide, but as an educator, and really
22 working at a time when Governor Strickland was the governor, he
23 had a program to try to close the achievement gap, which then
24 Senator Prentiss, when she was no longer in the Senate, led
25 that. And it showed very clearly, statistically, that there is

1 an academic-achievement gap between African Americans, Latinos,
2 and whites, and especially among African-American males, and
3 that if the State did not make the requisite investment
4 necessary to get those students who live in poorer and browner
5 communities up-to-speed, that we limit their ability to be able
6 to graduate from high school. And that is just the
7 foundational point.

8 And in the 21st Century, a high school diploma is no
9 longer even a starting point. You really need folks to have
10 high skills or higher degrees.

11 So, absolutely, Your Honor, both my time as a
12 legislative aide, but also my time as being a state senator in
13 the State, as well.

14 THE COURT: All right. All right. I think that the
15 Senator's testimony is adequate, Mr. Chandra. I don't think
16 that there is additional information that the Court will need.
17 And consistent with our discussion at side-bar, I would think
18 that you can move on to another area of inquiry.

19 MR. CHANDRA: Thank you, Your Honor.

20 MS. RICHARDSON: Thank you, Your Honor.

21 BY MR. CHANDRA:

22 Q. So we were progressing through your career. And
23 I -- Now I can't remember where we left off, because I asked
24 you to jump back. I think we were back at your City of
25 Cleveland time.

1 A. Yes.

2 Q. What sorts of policy issues, or legislative issues, did
3 you work on during your time as both a legislative aide and
4 then as an executive assistant to the mayor on behalf of the
5 administration?

6 A. Well, my time in the City, most of those bills were
7 functional. So, you know, the mayor's Department of Service,
8 for example, might introduce a bill to the Council to have them
9 fund salt, to pay for salt or snow removal or garbage pickup,
10 those kinds of things. So it was very functional to the
11 everyday duties and needs to run the City, more than -- Unlike
12 being on the State level, where it's more policy and
13 academically or intellectually driven, on the City level, not
14 so much.

15 Q. Okay. So, were you with the City of Cleveland and with
16 Mayor White at the time that there was mayoral control over the
17 schools?

18 A. No. That was before my time.

19 Q. Before your time?

20 A. Yes.

21 Q. And were you involved in any legislative work related to
22 the school district?

23 A. Not that I can recall.

24 Q. Okay. It's possible?

25 A. It is possible, because, the time that the mayor came to

1 do that, I might have been a legislative service, either fellow
2 or -- but I didn't, directly, have any involvement in that
3 change.

4 Q. Okay. Anything further you want to share with the Court
5 regarding your time working for the City?

6 A. No, nothing I can think of right now.

7 Q. Okay. Then, let's move forward and progress through
8 your career, please.

9 A. Okay. So, after --

10 Q. How many years did you work for the city?

11 A. Well, I worked for Mayor White for almost three years.
12 And then he didn't seek reelection. And, from there, I ran for
13 my very first office in 2001. I ran to become City
14 Councilwoman of Ward 1.

15 Before that -- Let me backtrack for the Court.

16 I did spend some time working for the Cleveland
17 Metropolitan School District as the Director of Government
18 Affairs. I lobbied on behalf of Cleveland's children, right
19 here, with the Legislature. And then I ran for Cleveland City
20 Council in 2001. I was not successful in that run.

21 Q. Before we come to that, I want to pause on your time
22 working as a lobbyist for the school district?

23 A. Okay.

24 Q. On what sorts of issues did you lobby for the school
25 district?

1 A. Funding is always the number-one issue, trying to find
2 the resources to educate Cleveland's children. Overwhelmingly,
3 the children that attend the Cleveland public schools are
4 African American. And most of them are poor. Most of the
5 students in the Cleveland Municipal School District qualify for
6 free lunch, which says a lot about the lack, or, the
7 socioeconomic challenges of the children in that school
8 district. So, it was always mostly about money.

9 Q. Okay. And how many -- what period of time did you do
10 that?

11 A. This was in the early 2000s.

12 Q. Okay. Do you remember the length of time?

13 A. I was at the school district maybe two or three years,
14 as well. And, at the same time, I was also an adjunct
15 professor at Cuyahoga Community College at the time, as well.

16 Q. Teaching what at that time?

17 A. Teaching African-American history and African-American
18 women's history.

19 Q. Okay. Did your curriculum include civil rights history?

20 A. It does. I mean, when we talk about African-American
21 history, of course, we definitely cover civil rights.

22 Q. And did it include curriculum on history of
23 discrimination against African Americans?

24 A. We talked about -- It wasn't a specific topic, but we
25 definitely talked about discrimination against African

1 Americans and the epic battle of African Americans throughout
2 their history in this country to fight for equality and
3 justice; that the African-American struggle in the United
4 States of America has been one of liberation.

5 Q. Did your curriculum also --

6 MS. RICHARDSON: Objection, Your Honor.

7 THE COURT: I'm sorry?

8 MS. RICHARDSON: Objection, Your Honor.

9 THE COURT: Basis?

10 MS. RICHARDSON: Opinion testimony.

11 THE COURT: Overruled.

12 MS. RICHARDSON: Thank you, Your Honor.

13 BY MR. CHANDRA:

14 Q. And, finally, did your curriculum include information
15 about voting rights history?

16 A. Oh, absolutely.

17 Q. Okay. So, you said you ran for Ward 1 council seat?

18 A. Yes.

19 Q. What year was that?

20 A. That was 2001. I was not successful. And then I ran
21 again, four years later, in 2005. And I was successful that
22 year. And I became the first African-American woman to
23 represent Ward 1, which is the Lee-Harvard area in the City of
24 Cleveland.

25 Q. Could you please describe the demographics of your

1 district, if you know?

2 A. Yes. Ward 1 is overwhelmingly African American. It's
3 also the community that I grew up in, primarily because my
4 grandparents purchased a home in that community. It is a place
5 in the City of Cleveland where African Americans actually
6 migrated to and were not relegated to. And so it was -- it was
7 a very robust middle-class community when I was growing up; not
8 so much now; but, growing up, it was.

9 Q. And, so, please provide more details about -- let's
10 start with the educational profile of the district, if you
11 know.

12 A. I don't know the exact educational profile of Ward 1 at
13 this time, but I can just say that, you know, based -- my
14 grandparents, that older generation that were fighting very,
15 very hard for people like me and subsequent generations to have
16 better opportunities, Ward 1 certainly had a higher level of
17 education when it comes to African-American communities, as
18 compared to a Hough, which is a poorer community. But African
19 Americans in the City of Cleveland, right now, overall, one in
20 five -- only one in five have a high school diploma. And that
21 is really the bare minimum that you can have in a
22 knowledge-based economy. And 36 percent of Clevelanders live
23 in poverty in the City of Cleveland.

24 So Ward 1, although it, for the African-American
25 community, may have higher levels and be a little more robust,

1 overall the City of Cleveland, which is about 56-percent
2 African American, is suffering -- African American, is
3 suffering.

4 And, by the way, just this year, alone, the City of
5 Cleveland was named the most distressed city in the nation.
6 And it was based on income -- you know, the gap between the
7 poor and wealthy.

8 Q. Within Ward --

9 MS. RICHARDSON: Objection, Your Honor.

10 THE COURT: Basis?

11 MS. RICHARDSON: Opinion testimony.

12 THE COURT: This witness has not testified as an
13 opinion witness. But, given her work and her experience, this
14 would be within the kin of her knowledge base. So your
15 objection is overruled.

16 MS. RICHARDSON: Thank you, Your Honor.

17 BY MR. CHANDRA:

18 Q. Within Ward 1, has there been a change, to your
19 knowledge, in the educational profile over the course of the
20 time that you've been residing within Ward 1?

21 A. Yes, absolutely, there has been a change. I mean, the
22 poverty that has overtaken the City of Cleveland certainly has
23 affected Ward 1. And as generations like my grandmother, the
24 baby-boom generation, transitions, you find a younger,
25 less-educated generation has moved into Ward 1. So Ward 1 is

1 feeling the same effects that some of our neighbors in a Hough
2 may feel, as well. There is definitely a demographic -- a
3 socioeconomic shift in Ward 1, as it is in the entire City of
4 Cleveland.

5 Q. And, so, my question was with respect to education. How
6 about with respect to the economy within Ward 1? And let's say
7 with incomes.

8 A. I don't have the exact data for that. What I can say is
9 what I said before. In terms of the levels of poverty, 36
10 percent of the people who live in the City of Cleveland are
11 impacted by poverty. I can say that, as a councilwoman in Ward
12 1, I used to do these activities monthly called *Walks With*
13 *Turner*. And I would walk the community with some elders just
14 to knock on doors and, you know, check on neighbors, and
15 especially streets that were plagued by either drug activity --
16 A lot of elders in the community had lots of fear. They didn't
17 sit out on their porches like they once did when I was growing
18 up. And I thought it was part of my duty to make sure that the
19 residents of Ward 1 knew that they were not alone.

20 And so you would see the devastation in the communities.
21 You would see, you know, piles up of trash and garbage and the
22 kind of deterioration that you just -- I didn't see when I was
23 growing up. Those things are very symbolic of a lack of
24 resources in a community. So I did see that type of activity
25 going on in Ward 1 when I was the councilwoman.

1 Q. Have you seen a change in Ward 1 with respect -- since
2 the time you've been living there, with respect to the issue of
3 health?

4 A. In one particular community -- one particular community
5 in my ward, there was always concerns about smelling gases.
6 This was in the Seville -- Miles-Seville community within
7 Ward 1. And so there was also always concerns -- and I had to
8 bring out East Ohio Gas on a number of occasions to have
9 community meetings -- that, somehow, that particular community
10 was being plagued with environmental racism.

11 Q. I'm going to -- Actually, let's continue your career
12 progression.

13 So, as a Ward 1 councilwoman, what sorts of policy
14 issues were you advocating?

15 A. Pretty much, you know, the same that I was doing as a
16 legislative, or, somebody in the mayor's cabinet. But then,
17 now, I'm front seat, up front. I pushed a lot of policies that
18 had to do with curfew. I was very concerned about young people
19 being out on the streets at night at times where their parents
20 were not watching them or some responsible adult; just really
21 wanted to make sure that our young people were safe. But in
22 terms of the everyday policy positions, in terms of pushing,
23 again, it's still -- most of the policy that ran the City came,
24 still came, from the administrative side of the House.

25 Q. Okay. And if you could continue your career progression

1 from there.

2 A. In the latter part of 2008, I was approached to compete
3 for an appointment to the Ohio Senate. At that time, Senator
4 Lance Mason had been tapped by Governor Strickland to become a
5 judge. And so that left a vacancy. So I did compete. And the
6 only group that had to make that decision -- There was about
7 two years left on then-Senator Mason's term -- was the Democrat
8 caucus. So, I competed among other State reps and others who
9 wanted that position. And I was selected, unanimously, by the
10 Senate Democrat caucus. They were the only ones who had to
11 make that decision because it was a two-year -- two years left.
12 So I was sworn in to become a State senator in Two
13 Thousand -- the latter part of 2008. And then I ran for the
14 seat in 2010.

15 Q. And can you -- What district number was that?

16 A. District 25.

17 Q. Would you describe the demographics of the district to
18 the Court, please?

19 A. When I started before redistricting, mainly, I had only
20 Cuyahoga County. My district, District 25, has cities in it
21 such as Cleveland; but I also had cities like Beachwood and
22 Shaker. So you could go from a very wealthy community to
23 communities that were in poverty. So, we spanned the gamut.

24 Demographically, in terms of race, my district was not a
25 majority of African American. It was pretty much mixed. It

1 was a solidly mixed community.

2 Q. Was the percentage of African-American constituents
3 higher than in the general population in Ohio, to your
4 knowledge?

5 A. To my knowledge, that would be true.

6 Q. Okay. And what other communities were in your district,
7 and did it change over time?

8 A. Large Jewish population in my district, having
9 Beachwood. And, yes, it did change, over time, after
10 redistricting. Then District 25 started to engulf portions of
11 Lake County. So, it had Painesville, portions of that county,
12 that had, you know, higher numbers of Latino populations as
13 well.

14 Q. And, then, was East Cleveland in your district at any
15 time?

16 A. Yes, absolutely. East Cleveland was in my district
17 before I left the Legislature. It had not been previously.
18 But, yes, East Cleveland was in the district.

19 Q. Would you describe for the Court, please, the
20 demographics of East Cleveland?

21 A. East Cleveland is an overwhelmingly majority African
22 American. They have about a little less than 25,000
23 constituents. High poverty rates. There was a study conducted
24 by Case Western Reserve in 2012 that showed that the reading
25 level -- that 79 percent of the residents that live in East

1 Cleveland are functionally illiterate.

2 MS. RICHARDSON: Objection.

3 THE COURT: Basis?

4 MS. RICHARDSON: Hearsay. Also opinion testimony.
5 Outside the scope of personal knowledge.

6 THE COURT: I'm going to overrule the objection in
7 part and sustain it in part. The portion that references the
8 Case Western study will be stricken on the basis of inadequate
9 foundation.

10 Mr. Chandra, you have -- I'm going to give you an
11 opportunity to lay the foundation for the Senator's reliance on
12 this study, but I will note that I don't know that it is
13 dispositive, given the voting issues in this case, unless you
14 can somehow tie it up. So --

15 MR. CHANDRA: I hope to connect later, Your Honor.

16 THE COURT: All right. Your objection is sustained in
17 part and overruled in part.

18 MS. RICHARDSON: Thank you, Your Honor.

19 BY MR. CHANDRA:

20 Q. Senator, how did you become -- Well, let me back up.

21 So, did you have direct dealings with East Cleveland
22 constituents?

23 A. Yes, I did. I participated in community meetings. I
24 even met with the mayor. East Cleveland was in dire economic
25 straits. It still is. And the Auditor of the State -- and I

1 might not be getting his ruling exactly right; but, in other
2 words, East Cleveland was not able to meet its obligations, its
3 fiduciary obligations, to the citizens of that city.

4 BY MR. CHANDRA:

5 Q. You mean a financial --

6 A. Financial. I'm sorry. Yes, financial.

7 So, yes. I had meetings with the mayor of that city. I
8 had meetings with the council president of that city, because
9 it pained me and concerned me greatly. I mean, what can we do
10 to increase the financials of the city? What could I do, as a
11 State senator, to help them out?

12 A lot of that had to do with concentrations of poverty.
13 And, so, when you have people living in a city and their
14 employment level is not high, their education level is not
15 high, then they don't have the same capacity or ability to pay
16 into the tax structure. And so, really, you're managing
17 poverty. And that was a very real concern for the city of East
18 Cleveland. The State took notice of that. The auditor of the
19 State took notice of that, and it was pretty devastating. It
20 still is right now.

21 Q. Did you interact directly with East Cleveland residents?

22 A. Yes. We've had many meetings. I mean, East Cleveland
23 residents, you know, concerned about whether or not, when they
24 dial 911, will the police come; will EMS come; will fire come;
25 will my snow be removed; will my garbage be picked up. Those

1 were very real, quality-of-life concerns for the residents of
2 the city.

3 Q. Did you have the opportunity to interact with East
4 Cleveland residents to the point where you were able to assess
5 their functional literacy?

6 A. No.

7 Q. Okay. So did you undertake any sort of effort to gather
8 information about literacy issues among your constituents?

9 A. Not literacy issues, per se; but, in terms of being a
10 State senator and fighting very hard for educational funding
11 and hearing from superintendents, not just in East Cleveland
12 but throughout my district, that the State of Ohio was
13 abdicating its responsibility to solve DeRolph, those are the
14 kinds of issues that I -- that I dealt with as a State senator.

15 Q. Okay. Did you at some point come across any studies of
16 literacy in East Cleveland?

17 A. Yes, I did come across studies, not just in East
18 Cleveland, but in the City of Cleveland, as well. There was a
19 Case Western Reserve study. Yes.

20 Q. This is what I want to break into pieces here.

21 A. Okay.

22 Q. How did you come across a Case Western Reserve study?

23 A. In my -- In my research -- again, I am an educator, too.
24 I mean, I was not just a State senator. I am an educator. And
25 I am a professor at a university that accepts all people. And

1 the campus that I teach at is also the campus that I graduated
2 from. It is nestled in the heart of the City of Cleveland,
3 surrounded by projects, by CMHA projects, by a community that
4 is socially and economically depressed.

5 So, for me, my passion has always been that of
6 education. So I've always taken that very personally, because
7 I am a first-generation college graduate. And I know the power
8 of education to help somebody change the trajectory of their
9 lives, to become -- I consider myself a cycle-breaker. And my
10 son was a second-generation college graduate. So, for me,
11 education was always important. Those are the issues that I
12 care about the most.

13 So, when I'm talking to superintendents, when I'm
14 talking to residents who worry about whether or not their child
15 is going to be educated just based on the fact that they might
16 not be property rich, when you talk about pass-the-book
17 budgeting, which the State of Ohio was very much involved in,
18 when you cut education to a city, funding to education for
19 cities like Cleveland and East Cleveland and then that city has
20 to depend on residents to pass an operating levy to get those
21 funds but at the same time those residents are poor and they're
22 just trying to make ends meet, or you have an older population,
23 a more seasoned population, and those elders are on a fixed
24 income and, even though they want to very much help Mrs. Jones'
25 son or daughter get a great education, they're also worried

1 about whether or not they can pay their mortgage or feed
2 themselves, and so any increase to their taxes causes a burden,
3 and who suffers? The black and brown and poor white children
4 in those communities.

5 Q. Senator, I appreciate that, but what I --

6 MS. RICHARDSON: Objection, Your Honor.

7 THE COURT: Side-bar.

8 (Thereupon, the following proceeding was held at side-bar.)

9 MS. RICHARDSON: Your Honor, this is extensive
10 background. And I don't mean to interrupt, but we've gone far
11 afield from what's relevant to this case. And to the extent
12 where this is all leading is, again, to get into studies and
13 other documents, those would be hearsay. And, as a lay
14 witness, she cannot introduce those.

15 THE COURT: Go ahead, Mr. Chandra.

16 MR. CHANDRA: I was not trying to elicit that
17 narrative response, Your Honor. I was simply trying to
18 establish that she had come across this study, what was she
19 aware of regarding it, and its methodology. Did she --

20 THE COURT: How are you going to get that testimony
21 in? Under which exception under 803 does it come in, or does
22 it come in under 804?

23 MR. CHANDRA: I think it might come under both, Your
24 Honor. But what I'm trying to do is establish some foundation
25 for her knowledge and experience about the literacy issues

1 involving her constituents, the statistics. And then that
2 connects to the Senate Factors.

3 THE COURT: I really think that you have gone far
4 afield in trying to present whatever background you think you
5 need to establish for her to testify about the Senate Factors.
6 It's almost as though you focused -- you're trying to prove
7 functional illiteracy in her district. That's not this case.
8 That's not what this case is about. This case is not about
9 functional illiteracy. This case is about whether 205 and 216
10 are constitutional. Right?

11 MR. CHANDRA: If I may, Your Honor, one of our claims
12 is a Voting Rights Act literacy claim. And, so, under the
13 Senate Factors, one of the things we want her to be able to
14 testify about is her perception, then, about the impact of 205
15 and 216 on her particular constituency about which she has
16 personal knowledge.

17 THE COURT: Yes. Yes. Yes. I agree. But, you know,
18 as a fact finder, I think that you have laid a sufficient
19 foundation without going into, you know, various studies,
20 because -- I don't want you to take a road -- you know, you
21 have to prove the validity of the studies, and Ms. Richardson
22 has to prove the invalidity of the studies to get back to
23 whether the education component of the Voting Rights Act has
24 somehow been vitiated.

25 So, take it from the finder of fact that, you know,

1 you've laid a sufficient foundation. And let's not forget the
2 broader issues as you do your drill-down. Okay?

3 MR. CHANDRA: I'll keep moving forward. Thank you,
4 Your Honor.

5 (The following proceedings were had in open court.)

6 THE COURT: Please continue, Mr. Chandra.

7 MR. CHANDRA: Thank you, Your Honor.

8 BY MR. CHANDRA:

9 Q. So, just wrapping up your professional background, you
10 served as a State senator from what year to what year?

11 A. From 2008 through 2014. I didn't run for my second
12 term, which was up in 2014. Instead, I ran for Secretary of
13 State.

14 Q. Okay. And what were the years of that campaign?

15 A. 2014.

16 Q. And during your time as a State senator, did you
17 interact, directly, with constituents from your district?

18 A. Yes.

19 Q. Including African-American constituents?

20 A. Yes.

21 Q. And, during your statewide run, did you interact with
22 voters around the State?

23 A. Yes.

24 Q. Did that include African-American voters?

25 A. Yes.

1 Q. Okay. And what -- how are you currently employed?

2 A. I am a tenured professor at Cuyahoga Community College.

3 Q. And teaching, there, what subject?

4 A. I teach African-American history, African-American
5 women, U.S. history, and urban studies.

6 Q. And do you do anything else, professionally, right now?

7 A. I took a leave of absence from the Ohio Democratic Party
8 --

9 Q. And what was --

10 A. -- as the Chair of Party Engagement.

11 Q. Okay. All right. I'd like to turn your attention
12 now -- Is there anything more about your professional
13 background we left out?

14 A. No.

15 Q. All right. I'd like to turn your attention now to
16 several factors. And I'm going to ask you questions about
17 each.

18 First, based upon your experience, are you aware of a
19 history of official discrimination that has touched the rights
20 of minority citizens in Ohio to register, vote, or otherwise
21 participate in the democratic process?

22 A. Absolutely.

23 MS. RICHARDSON: Objection.

24 THE COURT: Overruled.

25 MS. RICHARDSON: Thank you, Your Honor.

1 THE WITNESS: Yes.

2 BY THE COURT:

3 Q. Could you please describe what that history of which you
4 are aware is?

5 A. From my personal experience, the history that I am aware
6 of, in 20 -- in 2006, *Boustani vs. Husted*, in the Legislature
7 at that time, a legislation was passed to give poll-workers the
8 authority --

9 Q. Legislation?

10 A. Or -- yes, was passed to give poll-workers the ability
11 to question the citizenship of those who would go and vote. If
12 it was determined that that person was a naturalized citizen, a
13 poll-worker could demand that that person show their paperwork
14 before they could vote.

15 Just, you know, boggles my mind. For me, in the
16 legislature, myself, just firsthand seeing countless numbers of
17 voter suppression bills pass --

18 Q. Before you move on, let me ask a followup question about
19 the statute you just described?

20 A. Yes.

21 Q. Who was the Speaker of the House, if you know, at the
22 time that that statute was signed into law?

23 A. The Speaker of the House at that time was Jon Husted,
24 who is the current Secretary of State.

25 Q. Okay. And do you have knowledge of what happened with

1 that statute eventually?

2 A. Eventually -- I mean, through courts --

3 MS. RICHARDSON: Objection. I apologize. Objection,
4 Your Honor.

5 THE COURT: To the question of whether she has
6 knowledge of what happened to the statute?

7 MS. RICHARDSON: May I request a side-bar, Your Honor.

8 THE COURT: Yes.

9 (Thereupon, the following proceeding was held at side-bar.)

10 MS. RICHARDSON: Your Honor, I object to the line of
11 questioning about a statute that is not at issue in this case
12 and has nothing to do with the issues. I thought that
13 prior -- I did not object to the prior question; but if it's
14 clear that we're going to be going down the line and continuing
15 to get into this, I object, generally, on relevance grounds.

16 THE COURT: What's the relevance, Mr. Chandra?

17 MR. CHANDRA: So, one of the Senate Factors or Factors
18 under *Thornburg v. Gingles* is a history of discrimination. And
19 we are going through the witness' understanding of what she
20 believes to be a history of discrimination.

21 The *Boustani* case is a clear example of that where --
22 The statute at issue is a clear example of that.
23 Discrimination against naturalized citizens in voting. And
24 that -- I mean, again, I don't have very many questions about
25 it, but it's part of what she knows about the history of

1 discrimination. We're trying to make our record.

2 THE COURT: Tell me how the statute relates to this,
3 the statute that you are inquiring about.

4 MR. CHANDRA: Because it's a part of the history of
5 official discrimination by the State of Ohio in voting. And,
6 so, that history is directly relevant. Under the Senate
7 Factors, it's one of the things to be considered by the Court.
8 Now, the Court can give it whatever weight it desires, but it
9 is an express thing the courts consider when applying those
10 Gingles factors.

11 MS. RICHARDSON: This case is not about naturalized
12 citizens or immigration. First of all, we would, obviously,
13 object to the accusation that there was intentional
14 discrimination. As we've stated, we object, generally, to
15 legislative intent on the basis that it is not possible to
16 divine the intent of the Legislature from individual people.
17 But, here, we have a situation where we don't even have any
18 evidence --

19 THE COURT: I've already ruled on the legislative-
20 intent issue.

21 MS. RICHARDSON: Thank you, Your Honor.

22 THE COURT: They can provide legislative intent. I'm
23 just trying to get my head around how the statute that you're
24 referring to plays into it. I still am at a loss.

25 MR. CHANDRA: That means I'm failing to explain it,

1 Your Honor.

2 When I look at that first Senate Factor -- and I can
3 bring it to you to look at -- when I look at it, the plain
4 language of that first Senate Factor calls for an analysis of
5 the history of discrimination. I mean, that's what it
6 requires. And, so, this witness --

7 THE COURT: We need a statute that deals with
8 immigration to do so?

9 MR. CHANDRA: Well, immigration is correlated with
10 race, Your Honor.

11 THE COURT: Yeah, but --

12 MR. CHANDRA: There are a few more questions that I
13 can ask this witness that will help make that connection.

14 THE COURT: You don't think that -- Is your ultimate
15 point that there was discrimination based on race in this case?

16 MR. CHANDRA: Yes.

17 THE COURT: And is your goal to establish, by way of
18 foundation, that there is a history of racial discrimination in
19 this country?

20 MR. CHANDRA: Not even so much in the country, Your
21 Honor. I'm focused on Ohio.

22 THE COURT: In Ohio?

23 MR. CHANDRA: Yes. Yes, on our defendants. Yes.
24 And, specifically, the statute was about voting. And, so,
25 voters would be -- poll-workers were required to ask the

1 citizenship status, or given that discretionary option, which
2 then, we would contend, would be correlated by race. They're
3 not going to ask somebody who looks, you know, Caucasian that
4 question. They're going to ask people of color. The question
5 gets asked: Are you a citizen? That was the first question in
6 the statute.

7 The second question required, if you said "yes" -- and
8 these are voters who are registered already, by the way -- the
9 second question was: Native born or naturalized?

10 Now, a guy who looks like me gets asked that question.
11 So now the next question, if you say naturalized, is: Show me
12 your certificate of naturalization.

13 And you would not get a regular ballot unless you could
14 do that, immediately, on the spot. The Defendant Secretary of
15 State, Jon Husted, was the Speaker of the House when that was
16 passed. It's from the last ten years. And I'm not going back
17 way back in time. I'm trying to move, from this point forward,
18 to this witness' understanding of the history of discrimination
19 that's within her knowledge.

20 THE COURT: All right.

21 Go ahead, Ms. Richardson.

22 MS. RICHARDSON: Your Honor, even just the
23 justification that was given here assumes so many facts that
24 are not in evidence and that this witness would not be able to
25 bring in evidence. These are highly inflammatory and

1 prejudicial accusations. And the statute does not have
2 anything to do with the issues in this case. It's not a
3 statute issue, and it does not bear on the issues to be
4 decided. It's highly prejudicial and not of any probative
5 value.

6 THE COURT: How is it highly prejudicial?

7 MS. RICHARDSON: Because, based on the description
8 that was just given here, it appears that counsel intends to
9 create an inference that this was motivated by an intent to
10 discriminate. And there is no basis in the evidence for
11 assuming that. And, again, these statutes have no bearing on
12 the statutes that are actually being challenged in this case.

13 THE COURT: You mean you think that he's creating an
14 inference that 205 and 216 were created based on an intent to
15 discriminate?

16 MS. RICHARDSON: We certainly --

17 THE COURT: Is that what you're saying?

18 MS. RICHARDSON: No, Your Honor. We certainly
19 disagree with that, as well; but that is a claim they have made
20 in this case.

21 THE COURT: No. No. I'm saying, your claim is that's
22 the inference that he's creating?

23 MS. RICHARDSON: Absolutely, Your Honor.

24 MR. CHANDRA: One last response, if I may, Your Honor?

25 So, the Court may not be aware that the federal court

1 did strike down the statute as unconstitutional discrimination.
2 That holding was not appealed by the State of Ohio. And I do
3 not want to suggest to the Court that what we're saying is that
4 this particular statute and what happened with it, taken in
5 isolation, should lead to the immediate conclusion that Senate
6 Bills 205 and 216 therefore display an intent to discriminate.

7 But what I'm saying is, there are nine factors in the
8 Gingles factors. And the history of discrimination by these
9 defendants is one of them.

10 THE COURT: I'm going to allow this.

11 I will tell you that it is of very marginal relevance,
12 and probably even of less persuasive value, in the overall
13 scheme of things when you think about the cumulative evidence
14 that we've received.

15 MR. CHANDRA: Yes.

16 THE COURT: But I will come back to you, Ms.
17 Richardson, and tell you that it's going to be important, in my
18 view, for you to give me evidence of what was the milieu out of
19 which these two statutes arose, because I'm continuing to hear
20 testimony that there were, you know, no issues from Boards of
21 Elections, that they were doing just fine with the signature
22 and with the way it was before the larger field factors came
23 into play. And, you know, I have a concern now, from hearing
24 the evidence and from having read all the briefs in this case,
25 that we have a solution looking for a problem, which is of

1 great concern when we have constitutional rights that we're
2 debating, and particularly the right to vote, which to me lies
3 right at the heart of our democracy. Once you start tampering
4 with the right to vote, the future of democracy, itself, is
5 imperiled. That's just what I think.

6 MS. RICHARDSON: Thank you, Your Honor.

7 THE COURT: But I'm not in your case in chief, but I
8 am going to give you the benefit of a roadmap.

9 MS. RICHARDSON: Thank you, Your Honor.

10 THE COURT: And that's kind of like the main stop on
11 the roadmap to me. I'm going to allow it; but, Mr. Chandra, I
12 beseech you to -- you know, a direct route is not a bad thing.
13 You know.

14 MR. CHANDRA: Okay. I'll cover this factor as fast as
15 I can, Your Honor.

16 THE COURT: Look, I want you to be quick, but not in a
17 hurry. And, you know, I really think we're going around the
18 elbow to get to the thumb when you can just go more directly.
19 And much of this is surplusage.

20 As I just told Ms. Richardson from her vantage point,
21 I'm telling you that, when I sit down to write this case,
22 ninety percent of what you have just adduced will not be a part
23 of the calculus, because it was -- it's of marginal relevance
24 in the overall scheme of this. So, you know, with all of the
25 collective wisdom in the room, we should be able to more

1 narrowly focus this on the issues.

2 I want both sides to trust your instincts. Really, both
3 sides are really very smart lawyers who don't trust their
4 instincts because -- really, you've taken a shotgun approach
5 when a more focused approach would be far more effective, you
6 know. But, you know, I empathize with you, because you don't
7 know -- this argument may not succeed, so I'm going to try
8 every argument imaginable with respect to this point. And
9 that's what we've had. And you're much brighter than that,
10 both sides.

11 MR. CHANDRA: Your Honor --

12 THE COURT: No, no further comment necessary. I just
13 felt constrained to remind everybody that, you know, you trust
14 your instincts and experience so we can get to the heart of
15 these matters, because all of this, the platitudes and whatnot,
16 they're unnecessary. So --

17 MS. RICHARDSON: Thank you, Your Honor.

18 (The following proceedings were had in open court.)

19 THE COURT: Please continue.

20 MR. CHANDRA: Thank you, Your Honor.

21 BY MR. CHANDRA:

22 Q. Senator Turner, could you please continue your response
23 with respect to aspects of a history of discrimination in
24 voting that you perceived by the State of Ohio?

25 A. Yes. So, in 2008, we know that an overwhelming majority

1 of African-American voters in this state and all across the
2 country were very excited about the prospect of electing the
3 first African-American President to the United States of
4 America.

5 In 2008, in Cuyahoga -- in my county, alone -- and I was
6 there at the Board of Election -- at the Board of Elections,
7 there to see thousands of people, mainly African Americans.
8 But wrapped around the corner of East 30th and Euclid, I saw
9 generations of folks there to cast that ballot. An
10 overwhelming number of African Americans turned out that year.

11 Since 2008 and *Shelby County vs. Eric Holder*, we have
12 seen an influx of bills be introduced across this country
13 and --

14 Q. I'm going to focus your attention on Ohio.

15 A. -- in Ohio to create more barriers for people to be able
16 to come out and exercise their right to vote. And in my
17 opinion the target has been African Americans, Latinos, poor
18 people, older people, and young people.

19 In Two Thousand -- Well, I want to go, if I
20 could -- 2012, if I could use 2012 as an example, directives
21 were put out by the current Secretary of State, Jon Husted, to
22 take away the last three days of early voting, to take away
23 evening hours where working folks, people who cannot just take
24 off from work, would utilize, African Americans, poor people.
25 Souls to the Polls was impacted as well. My caucus --

1 Q. What does that mean?

2 A. Souls to the Polls is Sunday voting that the
3 African-American community, and everybody -- It's not just
4 African Americans. Everybody can utilize that Sunday vote, but
5 it was very clear from a cultural perspective that the
6 African-American community overwhelmingly used Souls to the
7 Polls. And that was churches. You go to church that morning;
8 and, as a community, you would go and vote. And we saw that
9 play out in 2008 in Cuyahoga County; across the State, but, in
10 Cuyahoga County, I was there to witness that.

11 In 2012, because of efforts by the General Assembly and
12 the current Secretary of State to take away that kind of
13 access, my caucus did what we call -- we called it the
14 Sleep Out to Vote. And, so, we slept out all over the State of
15 Ohio, from Cincinnati, to Cleveland, to Dayton, to Youngstown.
16 For me, I slept out on the corner of East 30th and Euclid,
17 where the polling place -- where the Board of Elections is in
18 Cuyahoga County, all night long. We slept out the day before
19 early voting started because we did not know what the court
20 ruling would be in terms of returning those last three days.
21 And we wanted to alert our constituents that, don't wait, just
22 in case; you've got to get out here; and you've got to vote now
23 because what you have become accustomed to might not
24 necessarily be the reality.

25 That's -- those -- That kind of anxiety that voters had

1 about that -- you know, I had meetings with my constituents.
2 Questions were raised about, I was able to do it in 2008; why
3 can't I do it now in 2012. The African-American community was
4 -- had a great deal of anxiety at over that.

5 So, thank God, the courts did overturn that. But we had
6 no idea. We didn't know whether or not that was going to
7 happen.

8 Q. Would you please explain, as part of your answer, why is
9 it that you perceive those actions to curtail early voting as
10 part of the history of official discrimination touching the
11 rights of African-American voters?

12 A. Because --

13 MS. RICHARDSON: Objection.

14 THE COURT: Overruled.

15 MS. RICHARDSON: Thank you, Your Honor.

16 THE WITNESS: Because the African-American community,
17 generationally, we're amendment citizens. You know, it took an
18 amendment to the Constitution to give us our citizenship in
19 this country. The 15th Amendment, you know, gave black men the
20 right to vote; 19th Amendment, women to vote.

21 The African-American community, from generation to
22 generation, understands clearly -- I understand clearly, as a
23 citizen of this State and in this country, that African
24 Americans have had to fight for the fundamental right to vote.

25 And, so, for us, culturally, in my opinion and what I

1 have been able to witness, that right to vote is so
2 fundamental. And, so, when you see the pattern of African
3 Americans, in 2008 alone, the African-American voter is 26
4 times more likely to vote early in person, to use those early
5 voting days, to vote on Sunday as a community.

6 That was real. It was palpable, and there is empirical
7 data to back that up. So the African-American community
8 understood very clearly that the taking away of Sundays was a
9 direct affront to the very group that utilizes that day the
10 most from a cultural perspective. And that was African
11 Americans.

12 BY MR. CHANDRA:

13 Q. Okay. So are there any other aspects of the history of
14 official discrimination touching the rights of African-American
15 citizens to vote in Ohio that you perceive?

16 A. Yes. So, in 2013, about 15 -- could be more -- bills
17 were introduced by my colleagues on the Republican side of the
18 aisle to again thwart access to the ballot box. It had a
19 disproportionate impact on African Americans, anything from
20 introducing strict voter ID laws, which many African Americans
21 do not have the strict ID's that are necessary -- a lot of poor
22 people don't have the strict ID's necessary -- to the taken
23 away of Golden Week, again, the opportunity in the State of
24 Ohio that voters once had to both register and vote at the same
25 time.

1 There are studies that show that people who vote early
2 in the State of Ohio, whether they're poor and white, poor
3 blacks, poor Hispanics, poor people in general, utilize that
4 time because it didn't necessarily require them to take off
5 from work on Election Day, again another push by people who are
6 elected for a living to thwart access to the ballot box in the
7 great State of Ohio.

8 So, that came rapidly. It was furious in 2013. We
9 really couldn't keep up with all of the bills that were being
10 either -- both introduced and/or passed in the Legislature.

11 THE COURT: Just a moment.

12 (Whereupon, there was a brief interruption.)

13 THE COURT: Please continue, Mr. Chandra.

14 MR. CHANDRA: Thank you, Your Honor.

15 BY MR. CHANDRA:

16 Q. And I wanted to see if we could wrap up this area.

17 Any other aspects of the history of official
18 discrimination you believe have affected Ohio's
19 African-Americans citizens in voting?

20 A. In terms of a climate that was created in the State,
21 that continues. I mean -- well, I guess we'll get to Senate
22 Bills 205 and 216. But, in 2012, when African Americans raised
23 concerns and other civil rights groups, like the NAACP and
24 others, church leaders, raised concerns about the stripping
25 away of the Sundays and the evening -- just access to the

1 ballot box, GOP Doug Preisser, who was the leader, the Chairman,
2 of the Franklin County Board at the time, or Chairman of the
3 Republican Party, but a member of the Franklin County Board,
4 made a comment that was very clear that, in the response to the
5 concerns that the African-American community had about --

6 MS. RICHARDSON: I'm sorry. Excuse me.

7 Objection, Your Honor.

8 THE COURT: Sustained.

9 MS. RICHARDSON: Thank you, Your Honor.

10 THE COURT: Please rephrase your question, Mr.
11 Chandra.

12 BY MR. CHANDRA:

13 Q. What other -- What other knowledge do you have remaining
14 of the history of official discrimination by the State of Ohio
15 that touched the rights of minority citizens, specifically
16 African Americans, to vote or otherwise participate in the
17 Democratic process?

18 A. By the State of Ohio, I mean, just the different bills
19 that were passed and/or proposed created barriers. It created
20 an environment of confusion. I mean, on the floor, every
21 single time those bills were -- if they made it to the floor,
22 the ones that did make it to the floor, you know, I expressed
23 my objection to those bills, particularly because of the impact
24 that it would have on the African American --

25 Q. Aside from Senate Bills 205 and 216, any specific bills

1 that you want to mention?

2 A. Well, the taking away of Golden Week.

3 Q. You did mention that one. Any others that you haven't
4 mentioned so far?

5 A. The voter ID law, which, you know, again, stripped voter
6 ID.

7 I'm trying to call to my mind. There were about 15
8 bills that were introduced at the time. So, I don't remember
9 all of them off the top of my head.

10 Q. That's fine. So let's move on to another Factor.

11 A. Sure.

12 Q. Do you have knowledge of the extent to which elections
13 in Ohio are racially polarized?

14 A. Yes. Just looking at the voting patterns -- I can use
15 my county as an example -- at the time that we had a county
16 commissioner form of government -- we had three county
17 commissioners -- there was one African-American county
18 commissioner, Peter Lawson Jones, at the time. And when he
19 would run in Cuyahoga County, he would not get nearly as many
20 votes as his white counterparts running for the same position.

21 In 2006, when on the Democrat side there were -- well,
22 we have five statewide officers. There were four whites
23 running. And one African-American woman, Representative
24 Barbara Sykes, from Akron at the time, was running for Auditor.

25 Q. Is she African American?

1 A. She is African American, from Akron. That year, every
2 single Democrat won, except for Representative Barbara Sykes,
3 in the State of Ohio.

4 The State has a problem, a racial problem, in terms of
5 electing African Americans to statewide office. I ran in 2014,
6 as well. So, you know, I have some personal experience with
7 that. But, yes, it is -- it can be very racially polarizing in
8 the State of Ohio, especially for higher offices.

9 Q. And turning to another Factor, Senator -- and just let
10 me know if this is encompassed in your previous answers -- are
11 you aware of the use of voting practices or procedures that may
12 enhance the opportunity for racial discrimination aside from
13 Senate Bills 205 and 216?

14 MS. RICHARDSON: Objection. Leading.

15 MR. CHANDRA: I can rephrase it, if you'd like, Your
16 Honor.

17 THE COURT: Overruled.

18 MS. RICHARDSON: Thank you, Your Honor.

19 THE WITNESS: Could you repeat the question?

20 MR. CHANDRA: Sure. I'll ask the court reporter to
21 read it back.

22 THE COURT: Ms. Errett, would you read it back,
23 please?

24 (The last question was read by the court reporter.)

25 THE WITNESS: And it has to be legislative?

1 BY MR. CHANDRA:

2 Q. Any voting practices or procedures.

3 A. I mean, for -- Well, the Judge will tell me
4 whether -- You know, going back to 2012, when billboards
5 appeared in the African-American community, billboards that
6 said that --

7 MS. RICHARDSON: Objection.

8 THE COURT: Overruled. This is not being offered for
9 its truth, but for its effect on the senator.

10 MS. RICHARDSON: Thank you, Your Honor.

11 THE COURT: You may complete your answer, Senator.

12 THE WITNESS: Thank you, Your Honor.

13 You know, in 2012 -- you know, very heated, I mean, from
14 comments made by officials saying that they didn't believe that
15 the process should be contorted to enhance African Americans
16 being able to come out to vote, to billboards appearing in poor
17 neighborhoods in the City of Cleveland -- appearing across the
18 State, but particularly in the City of Cleveland, right up the
19 street from where I teach at Cuyahoga Community College on the
20 Metro Campus. A billboard appeared right off of Community
21 College Avenue that read that voter fraud is a crime. It had a
22 big gavel, a judge gavel, punishable by three-and-a-half years
23 in prison, \$10,000 fine.

24 I went to that location off of Community College Avenue
25 with Cleveland City Councilwoman Phyllis Cleveland. And, you

1 know, my heart just really skipped beats to see that kind of
2 billboard in a very poor African-American community.

3 Folks from the community started to gather around myself
4 and Councilwoman Cleveland, and people were absolutely
5 outraged. I was outraged. The councilwoman was outraged. And
6 the whole environment was about, why would this happen.

7 Over the course of being an elected official, both in my
8 capacity as a councilwoman and as a State senator, every year,
9 I would get the question from my constituents about whether or
10 not ex-offenders in the State of Ohio had the right to vote.

11 Once ex-offenders have served their time, they can vote
12 in this State. They may have to re-register, depending on how
13 long they've been gone, but they can vote. But it just speaks.

14 Every year, there is a fear that this population will
15 not be able to vote. And, so, to have that kind of billboard,
16 for me, it was voter intimidation: Felony, voting, put
17 together in a community that is already socially and
18 economically depressed.

19 And people that were there, they were just -- it was
20 just gut-wrenching outrage about what was happening in that
21 community, again feeding on what was already going on in the
22 State at that time, the whole debate about whether or not Souls
23 to the Polls would happen, the last three days would be there.
24 It was this whole electric environment that created more
25 barriers for people to be able to vote, and particularly the

1 African-American community.

2 We get about 5,000 ex-offenders returning to the county,
3 a year, in Cuyahoga County. So, it was very distressing.

4 BY MR. CHANDRA:

5 Q. Okay. I'd like to show you what's been marked as
6 Plaintiffs' Exhibit 1236.

7 MS. RICHARDSON: Objection, Your Honor.

8 THE COURT: Side-bar.

9 (Thereupon, the following proceeding was held at side-bar.)

10 THE COURT: How much more do you have, Mr. Chandra,
11 approximately?

12 MR. CHANDRA: Depending on the succinctness of the
13 witness' responses, I'm about two-thirds of the way through my
14 outline.

15 THE COURT: All right. So we're not going to finish
16 before lunch.

17 All right. Go ahead, Ms. Richardson.

18 MS. RICHARDSON: Your Honor, this is hearsay. It's
19 403. This is a report that was not put out by any of the
20 defendants in this case or the State. It has no bearing on the
21 issues here. There is text underneath the billboard that is
22 also hearsay. And there is no indication as to who put that
23 text there or where it came from.

24 THE COURT: I understand.

25 MR. CHANDRA: I'm actually surprised to hear the

1 witness testifying about this particular billboard with respect
2 to this Factor, which is about the voting procedures. And it
3 may or may not bear on that Factor. I'm not sure how to
4 interpret that Factor myself, Your Honor. But with respect to
5 one of the Factors that's coming up shortly -- and I can grab
6 the exact wording for you, but it has to do with any effort at
7 intimidation or climate type of issues with respect to voting
8 and race. And, if I may, can I grab my list? It's directly
9 related to that Factor because, when I asked Senator Turner, in
10 preparing her, that question, this is what came to mind. She
11 personally saw the billboard.

12 THE COURT: All right. All right. I'm going to allow
13 her testimony because, as I said previously, Ms. Richardson,
14 it's not being offered for the truth. It's being offered to
15 show what effect it had on her and others and, you know, what
16 she perceived. And so I'm going to keep it in that context
17 and, you know, allow it for that limited purpose.

18 So, your objection is noted, but overruled. We're going
19 to break now for lunch. We're going to resume at one o'clock.

20 MS. RICHARDSON: Thank you, Your Honor.

21 MR. CHANDRA: Thank you.

22 COURTROOM DEPUTY CLERK: All rise, please.

23 Court stands in recess until one o'clock.

24 (Recess taken at 12:10 p.m.)

25 - - -

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Wednesday Afternoon Session

March 23, 2016

1:00 p.m.

- - -

THE COURT: Mr. Chandra, are you ready to proceed?

MR. CHANDRA: I am, Your Honor.

THE COURT: Please proceed.

MR. CHANDRA: Senator Turner wanted to explain her need to go to Ballot Board to the Court and see if she could be excused and then come back.

THE COURT: What time do you need to be excused, Senator?

THE WITNESS: Your Honor, I need to be at the Ballot Board, which is at the Statehouse, by 2:30.

THE COURT: All right. And so you need to leave here -- what? -- around 2:15?

THE WITNESS: Yes, sir.

THE COURT: Okay.

MR. CHANDRA: Thank you, Your Honor.

THE COURT: How long would you be gone for?

THE WITNESS: Your Honor, it typically don't last more than 30 minutes.

THE COURT: Okay. All right.

Since we don't have a jury, we can accommodate you easily.

1 THE WITNESS: Thank you, Your Honor.

2 THE COURT: Please continue, Mr. Chandra.

3 MR. CHANDRA: Thank you very much, Your Honor.

4 BY MR. CHANDRA:

5 Q. Senator Turner, when we left off, you were describing a
6 billboard that you saw. And I'd like to focus your attention
7 on Plaintiffs' Exhibit 1236. I'm going to zoom in a little
8 bit.

9 Is this a true and accurate depiction of the billboard
10 that you saw in Cleveland's central neighborhood?

11 A. Yes.

12 Q. Okay. And again, could you read the billboard, please,
13 into the record?

14 A. On the billboard, it says -- it reads, rather: "Voter
15 fraud is a felony."

16 Q. With an exclamation mark?

17 A. With an exclamation mark. There is a gavel, also, on
18 the billboard, that appears to be similar to a judge's gavel.
19 Up to three-and-a-half years and a \$10,000 fine.

20 Q. Okay. And have you already said what you needed to say
21 about your reaction to this?

22 A. Yes.

23 Q. Okay. Did you have discussions about this billboard
24 with members of the community?

25 A. Yes.

1 Q. And could you tell us about the nature of those
2 discussions?

3 A. In the discussions with members of the community, and
4 also Councilman Phyllis Cleveland, who was a representative of
5 this community, it was really -- people were very outraged.
6 They were upset. They didn't know why such a billboard would
7 appear in the African American community. And, also, it caused
8 some fear.

9 Again, about 5,000 ex-offenders return to Cuyahoga
10 County on a regular basis. And I've consistently been
11 questioned about whether or not ex-offenders have the right to
12 vote. So, this kind of conjured up that whole notion that, if
13 I -- if I vote, you know, am I breaking a crime.

14 Q. Did you try to do anything about the presence of this
15 billboard?

16 A. Yes, we did. I worked with Councilwoman Phyllis
17 Cleveland, and also activists in the community, to try to get
18 Clear Channel to remove the billboards.

19 Q. What is Clear Channel?

20 A. Clear Channel, they are the owners of the billboards.
21 So they're the company that owns the billboards. At first,
22 they said they could not, and they would not remove them. But
23 the pressure from the community -- we continued.

24 And finally, they did remove the billboards from the
25 Cleveland area; and Clear Channel did replace those billboards

1 with words that said "Voting is a right, not a crime."

2 Q. I may have missed this. What was the time frame in
3 which the billboard appeared?

4 A. The time frame was right before the fall 2012
5 presidential election.

6 Q. Okay. Okay. I'd like to move on, please.

7 We have discussed three factors so far. I'm going to
8 skip what would be considered the fourth, and I'll describe the
9 next one as the fifth factor.

10 Do you have knowledge of the extent to which, based on
11 your experience, members of the African-American community bear
12 the effects of discrimination in such areas as education,
13 employment, and health that hinder their ability to participate
14 effectively in the political process?

15 A. Yes. Again, my constituents in the City of Cleveland
16 and Cuyahoga County, in particular, reading levels, you know,
17 are not -- again, 43 percent of residents who live in Cuyahoga
18 County are functionally illiterate.

19 Just to give you an example of that, not being able to
20 read a bus schedule, for example, or not being able to write a
21 simple letter, they are impacted by education, or lack thereof.
22 The socioeconomic status, again, with the City of Cleveland
23 being considered the most distressed city in the nation, and
24 the poverty levels -- socioeconomic status has a lot to do with
25 the quality of life that people have or may not have.

1 Q. Turning back to your time on Cleveland City Council, did
2 you have interactions with residents that informed your views
3 of these issues?

4 A. Oh, yes. On a regular basis, I had monthly meetings in
5 my community. I did *Walks With Turner*, as I mentioned earlier.
6 So, I was very actively engaged. And, oftentimes, in the
7 meetings, my constituents would talk about their quality of
8 life.

9 Ward 1 is an aging community. I believe that our
10 population is older than the population within the City of
11 Cleveland itself. So a lot of the concerns were from elders
12 about what they could afford and what they could not afford.

13 Q. Specifically with regard to the comments you made about,
14 and your observations about, functional illiteracy --

15 A. Yes.

16 Q. -- did you have any experiences relative to your time as
17 the Ward 1 councilwoman that informed your views about literacy
18 as a problem in your community?

19 MS. RICHARDSON: Objection.

20 THE COURT: Overruled.

21 MS. RICHARDSON: Thank you, Your Honor.

22 THE WITNESS: Not -- not directly, just -- not
23 directly.

24 BY MR. CHANDRA:

25 Q. Okay. And how about as a State senator?

1 A. Not directly.

2 Q. Okay. Did you, in any of your time in public service in
3 assisting your constituents, did you ever engage with
4 individual constituents with regard to the filling out of
5 government-related forms?

6 A. No.

7 Q. Okay. Did you ever task that responsibility to any
8 members of your staff?

9 A. No.

10 Q. Okay. And, so, from what did you formulate your
11 understanding of the level of literacy within the population
12 that you were engaging?

13 A. Besides the statistics, in some -- in many of my
14 community meetings, I mean, I had meetings where I would bring
15 in experts -- I'm going to use the Board of Elections for an
16 example -- to have people from the Board of Elections to come
17 in to talk to my constituents about what the rules were, what
18 kind of information they had to fill out. Lots of times,
19 people needed help filling out those types of forms.

20 MS. RICHARDSON: Objection.

21 THE COURT: Basis?

22 MS. RICHARDSON: Hearsay.

23 THE COURT: Overruled.

24 MS. RICHARDSON: Thank you, Your Honor.

25 BY MR. CHANDRA:

1 Q. Turning your attention now to what I'll call the sixth
2 factor, have you had experience with the use of overt or subtle
3 racial appeals in political campaigns in Ohio?

4 A. Well, this billboard is one example of that. And so I
5 won't repeat, you know, what I said. But, yes.

6 Q. Have you personally, in running for statewide office,
7 been the target of anything you perceived as an overt or subtle
8 racial appeal in a political campaign?

9 A. Yes.

10 Q. Could you please describe the circumstances? And if
11 you'd talk directly into the microphone, please, I'm having
12 trouble hearing you.

13 A. Yes. In my running for Secretary of State, there was an
14 ad put out by the current Secretary of State that had very
15 racial overtones; tried to paint me as a slum landlord.

16 MS. RICHARDSON: Objection.

17 THE COURT: Sustained.

18 MS. RICHARDSON: Thank you, Your Honor.

19 BY MR. CHANDRA:

20 Q. Could you please, to the best of your recollection,
21 describe the actual content of the mailing that you're
22 describing? What did it say, to the best of your recollection?

23 A. Well, it was both a commercial, but also literature that
24 was mailed out to funders that -- Some of those funders, or
25 people who would be donors, gave me a copy of it. And it

1 really tried to paint me as somebody --

2 Q. I'll stop you for a moment.

3 A. Sorry. Okay.

4 Q. I'm not speaking to what it was trying to do.

5 A. Okay.

6 Q. I'm asking you to answer only your recollection of the
7 content of -- Let's start with the T.V. advertisement you're
8 talking about, and then we'll turn to the mailer. What was the
9 content?

10 MS. RICHARDSON: Objection. I'm sorry, Your Honor.
11 Objection. Calls for speculation and hearsay.

12 MR. CHANDRA: Not for the truth, Your Honor.

13 THE COURT: Overruled.

14 THE WITNESS: In the mailer that went out to donors,
15 on the mailing, it had that I was a -- used the term "slum
16 landlord," that term used with the fact -- and my picture was
17 distorted.

18 BY MR. CHANDRA:

19 Q. In what way?

20 A. Darker. You know, so it really fed into the stereotypes
21 about African Americans that some people in society hold. It
22 turned out not to be true, to the extent that I had to, you
23 know, go to the judge within that housing court to get that
24 judge to make that known on the record. And my attorney at the
25 time did send that to -- I want to say it was the Republican

1 Party. But -- yes.

2 Q. I'm sorry. What did you mean by "send it to the
3 Republican Party"?

4 A. I mean to send what the judge had to say about that
5 claim to the Republican Party and to ask them to cease and
6 desist.

7 Q. And -- I'm sorry. I may have missed this, but could you
8 tell -- from the face of the mailer that you were provided,
9 what did it state the origin of the mailing was, the disclaimer
10 that --

11 A. Yes. I believe the disclaimer had the Republican Party
12 disclaimer on it, to the best of my recollection.

13 Q. Which one? Ohio or --

14 A. Ohio Republican Party, yes.

15 Q. Okay. So you've described the mailer. Anything more to
16 add about that with respect to your response as to why that was
17 an overt or subtle racial appeal in your view?

18 A. No.

19 Q. Okay. And, then, turning now -- I think you said there
20 was a television ad?

21 A. There was a television ad. I don't remember the ad
22 totally.

23 Q. Okay. Was the comment -- Excuse me. Was the content
24 regarding this slumlord allegation?

25 A. Yes. Yes.

1 Q. And was a similarly darkened depiction of you --

2 A. Distorted.

3 MS. RICHARDSON: Objection. Leading.

4 THE COURT: Sustained. Rephrase.

5 BY MR. CHANDRA:

6 Q. Was there any depiction of you, or a photograph of you,
7 or video in the ad?

8 A. Yes, and it was distorted.

9 Q. In what way?

10 A. Just visually distorted, did not depict me as I am right
11 now. There's a distortion to, in my opinion, to exaggerate the
12 fact that I am African American and to tie my ethnicity to the
13 term "slum landlord."

14 MS. RICHARDSON: Objection.

15 THE COURT: Basis?

16 MS. RICHARDSON: Hearsay.

17 May I request a side-bar, Your Honor?

18 THE COURT: I'm going to sustain the objection.

19 MS. RICHARDSON: Thank you.

20 MR. CHANDRA: With respect to the question or the
21 answer, Your Honor?

22 THE COURT: With respect to the answer.

23 MR. CHANDRA: Okay. The entire answer, Your Honor, or
24 a portion of it?

25 THE COURT: Rephrase your question, Mr. Chandra.

1 MR. CHANDRA: Sure.

2 BY MR. CHANDRA:

3 Q. So, you've described the depiction of you as distorted.
4 Without getting into the purpose that you perceived, could you
5 just simply describe for the Court how the depiction was
6 distorted?

7 A. The picture was dis- --

8 MS. RICHARDSON: Objection.

9 THE COURT: Overruled.

10 MS. RICHARDSON: Thank you, Your Honor.

11 THE WITNESS: The picture was distorted in that it did
12 not depict me as I am right now, as I appear in this court
13 right now, upstanding; you know, darkened. The picture and
14 what was said about me really adds to the stereotype about
15 African Americans.

16 BY MR. CHANDRA:

17 Q. Okay. I'd like to turn your attention now -- Do you
18 have anything more to add to your answer about the use of overt
19 or subtle racial appeals in Ohio political campaigns?

20 MS. RICHARDSON: Objection.

21 THE COURT: Sustained.

22 MS. RICHARDSON: Thank you, Your Honor.

23 BY MR. CHANDRA:

24 Q. What other overt or subtle racial appeals in political
25 campaigns in Ohio are you aware of?

1 A. In --

2 MS. RICHARDSON: Objection.

3 THE COURT: Sustained.

4 MS. RICHARDSON: Thank you, Your Honor.

5 BY MR. CHANDRA:

6 Q. Have you completed your answer regarding the use of
7 overt or subtle racial appeals in Ohio political campaigns?

8 A. No.

9 MS. RICHARDSON: Objection.

10 THE COURT: Sustained. That calls for a narrative.

11 Mr. Chandra. I've given you a roadmap. And the Senator would
12 be an excellent witness to follow that roadmap. You just have
13 to take her down that particular roadmap, Mr. Chandra, without
14 leading.

15 And let's allow relevancy to be the test. And let's
16 start with that which is most relevant to the issues in this
17 case and veer away from that which is least.

18 MR. CHANDRA: May I have a side-bar, Your Honor?

19 THE COURT: Yes, you may.

20 (Thereupon, the following proceeding was held at side-bar.)

21 THE COURT: Mr. Chandra, I'm trying really hard to get
22 you to focus on just have the witness testify about the stuff.

23 If I told you that I'm giving you 30 minutes, end of
24 story, I don't care what happens, if you can't get it out in 30
25 minutes, you're toast, that would change the nature of your

1 questioning. But I have resisted the Gwinn model, even though
2 he's one of my closest friends.

3 MR. CHANDRA: She clerked for him.

4 THE COURT: He is a great jurist, as far as I'm
5 concerned. But, Mr. Chandra, most of the morning -- What I'm
6 going to have to do is to try to go out and just aggregate that
7 which is most relevant from that which is at the margins. And
8 I shouldn't have to do that. No fact finder should have to
9 wonder what you're talking about on direct.

10 So I'm just saying let's get to what you know are the
11 really critical issues and why you called her, because you
12 didn't call her to give me a history lesson about race
13 relations in Cleveland.

14 MR. CHANDRA: Respectfully, Your Honor, I am
15 sensitive, and hypersensitive to, what the Court wants to focus
16 on as a fact finder. But for purposes of making our record
17 beyond even the Court, we can't control the fact that the
18 Supreme Court gave us these Gingles factors. And this is our
19 only witness who will fully address it.

20 THE COURT: I understand that. Mr. Chandra, I
21 understand that. And I understand the background that you have
22 to get. But, as much as any witness, we've existed around the
23 periphery. I really want to get to the substance because
24 this -- this has been so peripheral, that it's peripheral even
25 to the Gingles factors. That's what I'm trying to tell you.

1 Get to them. Identify the factors. Ask her what
2 supports the factors and keep moving. If you want to go into
3 the Senate Factors, identify the factors, keep moving. Just
4 identify them as if they were a headnote. And then take that
5 headnote and develop the evidence. But this -- this is
6 not -- we're really not getting there.

7 MR. CHANDRA: Your Honor, that was the question. That
8 was, specifically, Gingles Factor Seven, the way I phrased it:
9 Is there anything more to your response on an overt or subtle
10 racial --

11 THE COURT: No, that was not -- You see, you are
12 taking it out of context, because what that was was an
13 invitation to provide a narrative. So, now, that much, I do
14 know. So be more focused. And, you know, you're skillful.
15 You're very skillful, and certainly skillful enough to be
16 focused without leading. So let's --

17 MR. CHANDRA: I'll move on to the next factor. I have
18 two more factors left.

19 THE COURT: Well, get to them. I don't mind -- what I
20 mind is that we are -- it's almost a theoretical exercise in
21 the factors, as opposed to an evidentiary exercise in the
22 factors. I want to know the evidence which supports the
23 factors, not what, theoretically, could support the factors.

24 All right.

25 MS. RICHARDSON: Thank you, Your Honor.

1 (The following proceedings were had in open court.)

2 BY MR. CHANDRA:

3 Q. Senator Turner, I'd like to turn your attention now to
4 what I'll characterize as the eighth factor. Have you, in your
5 experience, perceived a significant lack of responsiveness by
6 Ohio elected officials to the particularized needs of African
7 American community members?

8 A. Yes.

9 MS. RICHARDSON: Objection.

10 THE COURT: Overruled.

11 MS. RICHARDSON: Thank you, Your Honor.

12 BY MR. CHANDRA:

13 Q. And if you could please go through, first, without
14 explanation, and identify as many of those as possible.

15 A. In the realm of the education budget, and also the
16 general budget, in particular monies to the local government
17 funds.

18 Q. Now if you could please explain that part of your
19 answer.

20 A. For the education budget itself, beginning with Governor
21 Kasich's first budget, funds were cut to K-through-12
22 education. And I know that I mentioned earlier in terms of
23 what impacts that has on communities that are already poor.
24 Particularly, African American communities where we see that
25 there are lower literacy rates and graduation completion rates

1 in those communities, it further exacerbates the quality of
2 life. And so, again, it forces local communities to have to
3 try to supplement those funds by passing levies, which is very
4 hard when a community is already being suffocated by poverty.

5 Q. Now, turning specifically to the issue of voting, have
6 you perceived any significant lack of responsiveness by the
7 relevant elected officials to the particularized needs of the
8 African American community?

9 A. Yes.

10 Q. And could you please explain that answer now?

11 MS. RICHARDSON: Objection.

12 THE COURT: Overruled.

13 MS. RICHARDSON: Your Honor, may I make just a
14 continuing objection to the opinion testimony?

15 THE COURT: Well, typically, I would allow that. But
16 what you consider opinion testimony I consider fact testimony.
17 And it may be easier, for record preservation purposes, for you
18 simply to interpose your objection.

19 The Court certainly understands your need to protect
20 your record and to object to any testimony that you believe is
21 not in keeping with the rules of evidence.

22 So, your objection is duly noted, but overruled.

23 MS. RICHARDSON: Thank you, Your Honor.

24 THE COURT: You may answer, Senator.

25 THE WITNESS: Thank you, Your Honor. The scaling back

1 of access to the ballot box, whether it's through taking away
2 early voting dates and times, introducing legislation that will
3 cause voters to have to jump through more hurdles and hoops
4 that have, again, a disparate impact on the African-American
5 community.

6 I was in the Legislature at the time that all of those
7 things were happening, whether it was happening through
8 directive by the Secretary of State or whether it was happening
9 through the passing through statute -- through law.

10 BY MR. CHANDRA:

11 Q. How long has Secretary of State Husted been the
12 Secretary of State?

13 A. Since 2010.

14 Q. During that time, has Secretary of State Husted, to your
15 knowledge, turned to you or other members of the Ohio Black
16 Legislative Caucus to ask for input regarding his directives or
17 other voting procedures that he has adopted?

18 MS. RICHARDSON: Objection.

19 THE COURT: Sustained.

20 MS. RICHARDSON: Thank you, Your Honor.

21 BY MR. CHANDRA:

22 Q. Since your time as a State senator, has Secretary of
23 State Husted reached out to you, personally, and asked for your
24 input with regard to voting procedures or directives as they
25 might affect your African-American constituents?

1 A. No.

2 Q. And to the best of your knowledge, has Secretary of
3 State Husted reached out just asking what you know -- to
4 members of the Ohio Black Legislative Caucus for that same type
5 of input?

6 A. To the best of my knowledge, no.

7 Q. Does that surprise you in any way?

8 MS. RICHARDSON: Objection.

9 THE COURT: Sustained.

10 MS. RICHARDSON: Thank you, Your Honor.

11 BY MR. CHANDRA:

12 Q. Have you written correspondence to the Secretary of
13 State regarding voting issues and procedures that would affect,
14 in your perception, your African-American constituents?

15 A. Yes.

16 Q. And has Secretary of State Husted ever responded
17 positively to you concerning your input?

18 A. No.

19 Q. Okay. I would like to turn your attention, now, to what
20 I'll call the ninth factor. And I'm going to break the
21 question into two parts, first with regard to Senate Bill 205,
22 and then with regard to Senate Bill 216.

23 A. Okay.

24 Q. Are you familiar with Senate Bill 205?

25 A. Yes.

1 Q. And what does Senate Bill 205 do, to the best of your
2 recollection?

3 A. To the best of my recollection, it changes the absentee
4 ballot procedures in the State of Ohio. It makes the five
5 fields on that -- on the envelope, itself, it moves from being
6 sufficient to forcing the voter to be -- to have sufficiency
7 and completeness.

8 Q. And do you have any knowledge of whether Senate Bill
9 205 -- I'm sorry. Was your answer complete?

10 A. And I just wanted to also add, about the bill, that it
11 prohibits Boards of Elections from mailing out unsolicited
12 absentee ballot applications to their constituents. And it
13 also prohibits the Secretary of State from doing the same
14 unless the General Assembly gives -- provides the budget to do
15 so. Unless the General Assembly approves it, the Secretary of
16 State now no longer can mail out unsolicited absentee ballot
17 applications.

18 Q. Okay. Are you aware of anything in Senate Bill 205 that
19 addresses the issue of poll-worker assistance to voters?

20 A. Yes. Poll-workers can no longer assist folks that are
21 filling out those applications in the way -- or that ballot.
22 They could previously do that, before Senate Bill 205. But now
23 they cannot unless that person makes it known that they have
24 some type of handicap and they need help.

25 Q. Okay. Were you in the State Senate at the time Senate

1 Bill 205 was introduced?

2 A. Yes, I was.

3 Q. And what was your understanding, gained from your time
4 in the State Senate, about the policy underlying the need for,
5 or even advisability, of Senate Bill 205?

6 A. On the floor of the Senate, which our floor proceedings
7 are recorded, there was robust debate about the merits of this
8 bill. My Republican colleagues, to my mind, did not give any
9 justification as to why they want to change the way things
10 were.

11 Making those five fields -- First of all, if someone
12 gets an absentee ballot, that means that they were already
13 entitled to that ballot. So I could not understand why the
14 General Assembly wanted to force voters to jump through
15 additional hoops.

16 And to -- again, even if the Board of Elections could
17 identify -- and I argued this on the floor of the Senate: That
18 even if the Board of Elections could determine that that person
19 is exactly who they say they are, if the five fields are not
20 completely filled out -- remember, we went from the burden of
21 just having to complete that to -- being complete or
22 sufficient -- we moved from sufficiency to sufficiency and
23 completeness. So now the Legislature moved the burden from the
24 poll-worker to the voter.

25 And in my floor speech, I distinctly remember that we're

1 moving to a tale of two cities, if you will: One that gives
2 access to voters and one that takes it away, and that it would
3 have -- doing something like this would have a disproportionate
4 impact on the African-American community and poor people and
5 would disenfranchise folks, in violation, in my opinion, of the
6 Civil Rights Act of 1964.

7 Q. Did you hear any proponent -- Well, first of all, who is
8 the sponsor of Senate Bill 205? Do you recall?

9 A. I believe the sponsor was Senator Coley, but I might not
10 be -- It was either Senator Coley or Senator Burke. But I
11 might not be correct.

12 Q. Okay. Did you hear, you know, either sponsor or other
13 proponents' rationales being offered for why Senate Bill 205
14 was necessary?

15 A. Yes. I listened intently. The rationale was
16 uniformity, which, you know, to my mind, made no sense. And I
17 argued that in my floor speech, again, which was recorded, that
18 uniformity for government is not the same -- you know, that we
19 shouldn't be fighting for uniformity for government at the
20 expense of the voter.

21 Q. Senator -- I'm sorry -- which aspect of Senate Bill 205
22 were you hearing, because you described different pieces of it?
23 Which aspect of Senate Bill 205 were you hearing this
24 uniformity argument on?

25 A. When -- I think it was Senator Coley -- when he got up

1 to give his speech, he just talked about -- just, overall, he
2 made a general, to my recollection, just a general statement
3 about how this bill was good government and that it would
4 provide uniformity within the voting space.

5 Q. Did he provide -- Did he offer voter fraud as a
6 potential rationale for it?

7 A. Not that I can recall. In his statements, not that I
8 can recall.

9 Q. Did you hear from any of the proponents for Senate Bill
10 205 a rationale about the need to stop voter fraud?

11 A. Not that I recall. Not that I can recall.

12 Q. Were you present for the Senate floor speeches on Senate
13 Bill 205?

14 A. I was present for the floor speeches for the entirety of
15 Senate Bill 205.

16 Q. Have you heard any proponents -- Well, I don't want to
17 repeat myself.

18 Have you heard any rationale from anyone supporting
19 Senate Bill 205 of voter fraud being a reason that that bill
20 needed to be adopted?

21 A. Rationale from any of the proponents of Senate Bill 205?

22 Q. Yes.

23 A. Not that I recall. I mean, the testimony that I
24 remember was really about uniformity and how this would be good
25 for the government. The argument that I made on the floor was

1 that this puts at peril and it puts up another barrier for
2 people who are trying to vote; that it's a solution in search
3 of a problem that does not exist; that the voters in my
4 district, and also in the State of Ohio, have come to be able
5 to have poll-workers help them; and, also, if the Board of
6 Elections can identify -- and, again, it's important to know
7 that these are people who are getting a ballot that the Board
8 of Elections already determined that they are who they say they
9 are; and then to have their ballot somehow thrown out for
10 immaterial reasons did not make a lot of sense to me.

11 I remember Senator Tavares on the floor, you know,
12 reading partial, partial responses from the President of the
13 NAACP of Ohio about how this would have a negative impact on
14 the African-American community. I remember Senator Shirley
15 Smith, who was the ranking minority member for the Senate
16 Democratic caucus on the committee that heard the bill, talking
17 about being very weary of the fact that all of these anti-voter
18 bills were coming at us fast and furious.

19 All of those things were debated on the floor, but my
20 colleagues who had sponsored the bill and my Republican
21 colleagues never gave legitimate justification for why more
22 barriers should be put up.

23 Q. Senator, when you articulated your objections as you've
24 just described them to Senate Bill 205 --

25 A. Yes.

1 Q. -- what replies did you hear from the proponents in
2 response to those specific objections?

3 MS. RICHARDSON: Objection.

4 THE COURT: Overruled.

5 MS. RICHARDSON: Thank you, Your Honor.

6 THE WITNESS: They pretty much ignored what I had to
7 say and my other colleagues on the Democratic side had to say
8 about the negative impact that it would have on the
9 African-American community and the poor communities, and they
10 passed the bill.

11 BY MR. CHANDRA:

12 Q. But what about specifically in response to the point
13 about the voters have already been qualified by the Boards of
14 Elections before they got the ballot? What was the response to
15 that factual observation?

16 A. No response whatsoever.

17 Q. Okay. I'd like to turn your attention, now, to Senate
18 Bill 216. Were you in the State Senate when Senate Bill 216
19 was introduced?

20 A. Yes, I was.

21 Q. Do you recall who the sponsor was at this time?

22 A. I believe the sponsor was Senator Bill Seitz.

23 Q. All right. And what rationale did you hear offered by
24 Senator Seitz for the need for Senate Bill 216? Before we do
25 that, could you describe, for the record, to your

1 understanding, what does Senate Bill 216 accomplish?

2 A. To my understanding, Senate Bill 216 deals with
3 provisional ballots and how -- again, the five fields and
4 changing, really, the standard within those five fields.

5 Q. And please explain that a little bit more.

6 A. That making those five fields, that, again, they have to
7 be sufficient and complete and that if the person that is
8 filling out that absentee or -- excuse me, not
9 absentee -- provisional ballot does not have all of those five
10 fields exactly, so if they make a mistake with the birthdate
11 where today's date is or that kind of immaterial mistake, that
12 their provisional ballot could be thrown out. And also the
13 bill lessened the cure period, if my memory serves me
14 correctly, from ten days, I think, to seven.

15 Q. Okay. And was there anything in the bill with regard to
16 poll-worker assistance again?

17 A. Yes, that poll-workers could not assist voters in
18 filling this out. Prior to the passage of that bill,
19 poll-workers did the majority of the work in filling out the
20 fields because they are the experts. They are the ones that
21 are trained to help the voter through this process to make
22 sure, as much as possible, that that provisional ballot can be
23 counted. And that changed under that bill.

24 And, if I can add, the U.S. Elections Assistance
25 Commission ranked the State of Ohio within the top ten states

1 who reject provisional ballots. So, even before that, we were
2 not doing a great job in the State of Ohio of making sure that
3 we counted as many provisional ballots as we could so that we
4 didn't disenfranchise people. And, then, to have this kind of
5 bill pass the Legislature further exacerbated that in terms of
6 the throwing out of ballots of voters that should legitimately
7 be counted.

8 Q. Is that commission you just mentioned a federal agency?

9 A. Yes, it is.

10 Q. So did you articulate concerns about the bill --
11 Actually, let me -- before we get to that, I asked you only
12 about Senator Seitz.

13 A. Yes.

14 Q. From other proponents of Senate Bill 216, what
15 rationales did you hear for why Senate Bill 216 was necessary?

16 A. I didn't hear any good rationale. And I did --

17 Q. No. I'm sorry. Not good. What rationales did you
18 hear?

19 A. I heard that -- I'm trying to think. I think Senator
20 Seitz just said, again, in terms of streamlining the process
21 for elections officials, that this bill needed to pass, and
22 something about lawsuits, too, some lawsuits being filed
23 against the State for those fields.

24 Q. With respect to what? What do you mean "with the
25 fields"? With poll-workers' assistance?

1 A. Yes, that if the poll-worker was the one assisting the
2 voter, that it would open the State up to lawsuits. Those two
3 things, I remember distinctly.

4 Q. And, so, anything else in terms of rationales that you
5 heard from proponents?

6 A. No, not that I can recall.

7 Q. Turning now to your reaction, did you engage in the
8 floor debate on the bill?

9 A. Yes, I did.

10 Q. And what did you say about Senate Bill 216 that
11 you -- Well, let's leave it at that.

12 A. I responded in the same way I did to Senate Bill 205 and
13 every other bill, to my mind, that was introduced by my
14 Republican colleagues to make it harder for people to vote:
15 That this bill would have a disenfranchising effect on African
16 Americans and poor people. To throw out, again, their ballot
17 for immaterial reasons, even if the Board of Elections can
18 determine that the person is who they say they are, is an
19 affront to the fundamental right to vote. I argued that on the
20 floor. My Democratic colleagues argued that on the floor, but
21 it fell to deaf ears. The bill passed.

22 Q. What response did you hear from the proponents of Senate
23 Bill 216 to the arguments that you made against the bill? What
24 was the reply?

25 A. I don't remember exact words; but, certainly, they

1 just -- they didn't agree with us, and they passed the bill. I
2 mean, they gave no -- they didn't even respond to what we were
3 raising. The issues that we were raising fell on deaf ears,
4 actually.

5 Q. What about specifically with regard to the issue of
6 poll-worker assistance?

7 A. I mean, they -- they didn't see any reason why
8 poll-workers should -- I don't remember exactly what they said,
9 but the end result was this: They passed the bill. And the
10 bill is very clear that poll-workers can no longer assist
11 people in filling out those provisional ballots. And it causes
12 harm to voters.

13 Q. All right. Did your colleague, Senator Skindell,
14 comment on Senate Bill 216 during the floor debate?

15 A. Yes, Senator Skindell did comment --

16 MS. RICHARDSON: Objection.

17 THE COURT: Objection as to whether Senator Skindell
18 commented --

19 MS. RICHARDSON: Your Honor --

20 THE COURT: -- or you're anticipating the next
21 question as to what he said?

22 MS. RICHARDSON: I believe the witness was just about
23 to explain what was said. And you're right. That was the
24 basis for my objection.

25 THE COURT: All right.

1 Senator, I want you to answer only the question asked,
2 which was whether Senator Skindell commented on Senate Bill 216
3 during the floor debate.

4 THE WITNESS: Yes, Your Honor.

5 THE COURT: All right.

6 BY MR. CHANDRA:

7 Q. And were you present for his comments?

8 A. Yes, I was.

9 Q. And what did you hear from Senator Skindell?

10 MS. RICHARDSON: Objection.

11 THE COURT: Overruled.

12 MS. RICHARDSON: Thank you, Your Honor.

13 THE WITNESS: I heard Senator Skindell, first of all,
14 say that the bill should be defeated. His major concern about
15 the bill was the five fields -- and he held up the document
16 that a voter would have to fill out -- and how difficult it
17 would be to read. And, particularly, the difficulty as it
18 relates to older people, he raised that objection very
19 strongly.

20 BY MR. CHANDRA:

21 Q. And was there any response from the proponents of Senate
22 Bill 216 to his specific objections?

23 A. No.

24 Q. You mentioned, among your objections, the reduction of
25 the cure period post-election?

1 A. Yes.

2 Q. Do you have a view that you've developed, based on your
3 experience with your constituents and voters, about the impact
4 of that reduced cure period, let's say on voters of Ward 1?

5 A. Ward 1? Yes, I do. Some poorer people tend to be very
6 transient. And I experienced that both as a councilwoman, you
7 know, sending out mailings and having those mailings returned.
8 The person, in terms of palpably more socially and economically
9 challenged, tend to move a lot. So, when it relates to that
10 particular bill, to reduce the cure period, if somebody has
11 moved, they may not get the letter to let them know that they
12 need to go down to their Board of Elections to correct an error
13 in time before the cure period is over.

14 So, again, that further disenfranchises people in the
15 African-American community and people who are poor.

16 MR. CHANDRA: Okay. Your Honor, may I have a moment
17 to confer?

18 THE COURT: Yes, you may.

19 MR. CHANDRA: Thank you.

20 (Brief pause in the proceedings.)

21 MR. CHANDRA: Okay.

22 Your Honor, at this time, I would like to move into
23 evidence Plaintiffs' Exhibit 1236.

24 THE COURT: Any objection?

25 MS. RICHARDSON: Yes, Your Honor. The objections

1 previously noted based on hearsay, 403, and relevance.

2 THE COURT: For the reasons previously given, I'm
3 going to overrule it. 1236 will be received.

4 MS. RICHARDSON: Thank you, Your Honor.

5 MR. CHANDRA: And I have no further questions. Thank
6 you, Your Honor.

7 THE COURT: Thank you.

8 If you will take the exhibit off the Elmo, Mr. Chandra.
9 Ms. Richardson, cross-examination?

10 MS. RICHARDSON: Thank you, Your Honor.

11 THE COURT: And you need to break at what time to get
12 over to the Statehouse?

13 THE WITNESS: By 2:15, Your Honor.

14 THE COURT: All right.

15 THE WITNESS: Thank you.

16 THE COURT: Ms. Richardson, you have until
17 approximately 2:15 and then the Senator has to leave. She can
18 return if you're not done with your cross.

19 MS. RICHARDSON: Thank you, Your Honor.

20 CROSS-EXAMINATION

21 BY MS. RICHARDSON:

22 Q. Good afternoon, Senator Turner.

23 A. Good afternoon.

24 Q. My name is Ryan Richardson, and I represent the
25 defendants in this case, the State of Ohio and Ohio Secretary

1 of State Jon Husted.

2 Senator Turner, I believe you testified on direct that
3 you were previously the head of engagement for the Ohio
4 Democratic Party; is that correct?

5 A. Yes.

6 Q. And what did that position involve in terms of
7 responsibilities?

8 A. Going out working with constituents, working with people
9 who had a desire to run for office. So, really, traveling
10 around the State and doing community engagement, primarily.

11 Q. As part of your role in that position, were you familiar
12 with the Ohio Democratic Party's Twitter account?

13 A. I knew we had a Twitter account, yes.

14 Q. And are you aware that the Twitter handle for that
15 account is @OHDems?

16 A. Yes.

17 Q. Thank you. Senator Turner, Mr. Chandra asked you a
18 number of questions about the passage of Senate Bill 216. Do
19 you recall that?

20 A. Yes.

21 Q. And based on your testimony today, is it fair to say
22 that you followed that bill's progress through the General
23 Assembly?

24 A. Yes, but I was not on the committee that, you know,
25 deliberated in a deep way the bill. But, yes.

1 Q. And were you aware of the committee hearings related to
2 this bill?

3 A. I knew that they were happening, yes.

4 Q. So you were aware that there were actually four
5 different committee hearings for Senate Bill 205 in the Senate;
6 is that correct?

7 A. I'm not aware of how many. I knew that the bill had
8 hearings, yes.

9 Q. And are you aware that there were four committee
10 hearings for Senate Bill 216 in the Senate?

11 A. No.

12 Q. And you provided some testimony about -- well, actually,
13 let's strike that.

14 You provided some testimony about what you recalled in
15 terms of the various reasons that were offered by the bill's
16 sponsor. Do you recall that?

17 A. Yes.

18 Q. I'm going to show you what's been marked as Plaintiffs'
19 Exhibit 1308.

20 MR. CHANDRA: Your Honor, objection. May we have a
21 side-bar, please?

22 (Thereupon, the following proceeding was held at side-bar.)

23 THE COURT: Go ahead.

24 MR. CHANDRA: Just briefly, Your Honor, I just wanted
25 to object only for the limited purposes of any reasons for the

1 statute being potentially viewed as hearsay, because it's
2 coming out through this witness in terms of impact-on-the-
3 speaker impeachment. I'm fine with all of that. But I just
4 didn't want the Court to be accepting this evidence to the
5 extent that it's hearsay as to the rationales.

6 MS. RICHARDSON: May I respond, Your Honor?

7 THE COURT: Yes, you may.

8 MS. RICHARDSON: Your Honor, this is evidence of the
9 context within which this bill was raised. And this witness,
10 in particular, as well as others, has been testifying about the
11 reasons in opposition.

12 THE COURT: Yes. Your objection is noted, but
13 overruled.

14 MR. CHANDRA: Okay.

15 MS. RICHARDSON: Thank you, Your Honor.

16 (The following proceedings were had in open court.)

17 THE COURT: Ms. Richardson, please continue.

18 MS. RICHARDSON: Thank you, Your Honor.

19 BY MS. RICHARDSON:

20 Q. Senator Turner, are you familiar with this document?

21 A. No.

22 Q. If you take a look at the top of the document, does it
23 state that this is sponsor testimony?

24 A. Yes.

25 Q. And which Senator drafted this? Can you tell that from

1 this document?

2 A. Yes.

3 Q. And who was that?

4 A. Senator Bill Seitz.

5 Q. And I believe you testified earlier that, to your
6 recollection, Senator Seitz was the sponsor of Senate Bill 216;
7 is that correct?

8 A. Yes.

9 Q. And you were asked some questions on direct about
10 whether Senator Seitz offered reasons for introducing this law.
11 Do you recall that?

12 A. Yes.

13 MR. CHANDRA: Objection. Mischaracterizes the
14 question.

15 THE COURT: Overruled.

16 BY MS. RICHARDSON:

17 Q. Senator, if you take a look at the first full paragraph
18 on that page, it states there: "The primary purposes of this
19 legislation are to reduce the number of provisional ballots
20 cast in the State of Ohio and to codify the United States Sixth
21 Circuit Court of Appeals' decision pertaining to provisional
22 ballots as a result of two cases, *SEIU v. Husted* and *NEOCH v.*
23 *Husted*."

24 Did I read that correctly?

25 A. Yes.

1 Q. And I'm going to ask you to take a look a little bit
2 further down on the same page. If you look at the last full
3 sentence in the paragraph that begins with "First" --

4 A. Yes.

5 Q. -- and that sentence states: "Consequently, Senate Bill
6 216 requires right church/wrong pew ballots to be counted
7 unless a poll-worker completes a form that explains the
8 poll-worker acted appropriately."

9 Did I read that correctly?

10 A. Yes.

11 Q. The last paragraph that begins on this first page starts
12 with the word "Third." Do you see that?

13 A. Yes.

14 Q. And it states there: "Third, Senate Bill 216 simplifies
15 the reasons for voting provisionally in an election." Is that
16 correct?

17 A. Yes.

18 Q. And it states: "I worked on this issue with then-
19 Secretary of State Jennifer Brunner, and we came to an ..."

20 If you'll look at the next page, it follows there:
21 "... came to an agreement that this portion of the law needed
22 to be simplified."

23 Did I read that correctly?

24 A. Yes.

25 Q. If you look at the paragraph that begins with the word

1 "Sixth" -- and I'll ask you to just take a look at the
2 paragraph. In that paragraph, it's describing the aspect of
3 216 that requires the voter, not the poll-worker, to complete
4 the ballot affirmation statement. Is that correct?

5 A. This is in the fifth, the one that starts with "Fifth"?

6 Q. The one that starts with "Sixth."

7 A. Oh, Sixth.

8 Yes.

9 Q. And the last sentence in that paragraph states: "This
10 will decrease the chances of incorrect information being
11 recorded on the voter's behalf which could potentially lead to
12 more litigation or their ballot not being counted."

13 Did I read that correctly?

14 A. Yes.

15 Q. Thank you, Senator.

16 And you're aware that there were proponents of Senate
17 Bill 216, correct?

18 A. Well, I'm not in committee. I'm not in that committee.

19 Q. But you followed the bill as it went through the General
20 Assembly, I believe you testified earlier, correct?

21 A. Yes, somewhat.

22 Q. I'm going to show you what's been marked as Plaintiffs'
23 Exhibit 1294. And at the top of this page, it states:
24 "Interested Party Testimony, Ohio Association of Election
25 Officials, SB 216."

1 Did I read that correctly?

2 A. Yes.

3 Q. And are you familiar with the Ohio Association of
4 Election Officials?

5 A. Yes.

6 Q. And what is that organization, to your understanding?

7 A. To my understanding, it is an organization of elections
8 administrators in the State of Ohio from both parties.

9 Q. Thank you, Senator. And if you take --

10 MR. CHANDRA: Your Honor, objection to the use of the
11 exhibit for the same reasons stated in chambers.

12 THE COURT: Overruled.

13 BY MS. RICHARDSON:

14 Q. And, Senator, if I can direct you to the second full
15 paragraph that begins with "OAE0," it states there: "OAE0 is
16 generally supportive of the direction that SB 216 takes us,
17 chiefly, establishing consistency in the casting of provisional
18 ballots in Ohio."

19 Did I read that correctly?

20 A. Yes.

21 Q. And it continues: "Court cases have established, and
22 our experiences have confirmed, that standardizing forms and
23 processes for casting provisional ballots will lead to greater
24 ease for voters and election administrators and accuracy in our
25 election results."

1 Do you see that?

2 A. I do.

3 Q. I'm going to ask you to take a look at the second page
4 of this same document. And I'll ask you to take a look at the
5 paragraph that begins with "Based on court cases."

6 A. Yes.

7 Q. And I'll give you a moment. I'm not going to read the
8 entire paragraph.

9 A. Okay.

10 Q. Have you had an opportunity to read that paragraph?

11 A. Yes.

12 Q. And is that paragraph describing the fields that are
13 required on the provisional ballot affirmation statement?

14 A. Yes.

15 Q. And if you take a look at the second full sentence in
16 that paragraph that begins with "However," it states there:
17 "However, the exclusion of date of birth and current address
18 actually has the unintended consequence of causing the
19 rejection of some provisional ballots."

20 Did I read that correctly?

21 A. Yes.

22 Q. And, in that sentence, they're referring to the fact
23 that excluding date of birth and current address from the
24 fields that the voter is required to complete. Is that your
25 understanding of this paragraph?

1 MR. CHANDRA: Objection, Your Honor.

2 THE COURT: Basis?

3 MR. CHANDRA: Competency of the witness to testify as
4 to the intent of the author.

5 THE COURT: Overruled.

6 BY MS. RICHARDSON:

7 Q. Thank you, Senator. You may answer.

8 A. Yes.

9 Q. And it goes on: "In particular, without a voter's
10 current address, a provisional ballot that has been cast
11 because the voter has moved but has not updated their address
12 with the Board is likely to be rejected."

13 Do you see that?

14 A. Yes.

15 Q. And it states: "One solution that the committee might
16 consider to help with this problem would be to require date of
17 birth and current address to be mandatory fields and then allow
18 the 12-B form to double as a voter registration as this Bill
19 currently allows."

20 Did I read that correctly?

21 A. Yes.

22 Q. And if you take a look at the last full sentence in that
23 paragraph, it begins with "As is always"?

24 A. Uh-huh.

25 Q. "As is always the case with mandatory forms, there is a

1 balance between what we require the voter to fill out with what
2 the election officials actually need to process the ballot.
3 The solution outlined above is one way to strike that balance."

4 Did I read that correctly?

5 A. Yes.

6 Q. Senator, I'll ask you now to take a look at the last
7 paragraph on this page.

8 A. Yes.

9 Q. And is that paragraph referring to the cure period for
10 provisional ballots?

11 A. Yes.

12 Q. Do you have an understanding as to what the cure period
13 is as it relates to provisional ballots?

14 A. Yes.

15 Q. What is your understanding?

16 A. My understanding is that it's the time that is allowed
17 from the time that the Board of Election realizes that there
18 may be some discrepancy and they notify, or attempt to notify,
19 the voter, it's the time period in which the voter can come and
20 make a correction.

21 Q. And in the last -- the second-to-the-last line of this
22 letter that you can see here on this page, it states: "The
23 bill as written reduces that time period to three days. I
24 believe the intent of this provision is to allow Boards of
25 Elections enough time to take that information into

1 consideration before beginning ..." And it continues onto the
2 next page. We start at the beginning of this page.

3 "... before beginning the official canvass 11 days after
4 the election. OAE0 recognizes that the intention of this
5 provision is admirable, but would suggest that voters begin in
6 seven days to provide this information."

7 Did I read that correctly?

8 A. Yes.

9 Q. And it states: "Practically speaking, Boards are not
10 receiving this information from voters after seven days. Thus,
11 this change would create the headroom for Boards between days
12 seven and eleven after the election to process this
13 information, while giving voters sufficient time to submit it."

14 Did I read that correctly?

15 A. Yes.

16 MR. CHANDRA: Objection, again, to the hearsay nature,
17 Your Honor.

18 THE COURT: Overruled.

19 BY MS. RICHARDSON:

20 Q. Do you know whether the law, as it was ultimately
21 passed, provided for seven days as the OAE0 recommended?

22 A. I believe that it did.

23 Q. Thank you, Senator.

24 A. Uh-huh.

25 Q. I'd like you to take a look at one more document with

1 respect to SB 216. And is this also interested-party testimony
2 from the Ohio Association of Election Officials?

3 A. Yes.

4 MR. CHANDRA: Same objection, Your Honor.

5 THE COURT: All right. Overruled.

6 BY MS. RICHARDSON:

7 Q. And in the first full paragraph, beginning with "OAE0
8 supports" --

9 A. Yes.

10 Q. -- it states: "OAE0 supports the intent of this
11 legislation, which is to standardize the provisional ballot
12 affirmation envelope and allow it to double as a voter
13 registration form."

14 Did I read that correctly?

15 A. Yes.

16 Q. Down at the bottom of this page, it states: "We are
17 glad the bill allows voters to register to vote as part of the
18 provisional process. Currently, a provisional voter must
19 complete two separate forms on Election Day ..." And it
20 continues onto the next page. "... if they want to update
21 their registration with the Board of Elections. They must
22 complete the 12-B affirmation form and a separate voter
23 registration form located on the back of the 12-B envelope.
24 Our association worked closely with Senator Seitz and
25 then-Secretary Brunner to resolve this issue."

1 Do you see that?

2 A. Yes.

3 Q. It says: "Unfortunately, the legislation we arrived at
4 did not become law. However, we are happy that this concept
5 has been picked up as part of SB 216 and believe this provision
6 is worthy of support."

7 Did I read that correctly?

8 A. Yes.

9 Q. If you take a look a little bit further down on that
10 page, the paragraph that begins "In many cases" --

11 A. Uh-huh.

12 Q. -- "In many cases where a voter has moved and not
13 updated their registration, having a voter's current address is
14 an essential piece of information in order to count a
15 provisional voter's ballot. We need to know where a voter
16 currently resides in order to verify that they are voting in
17 the correct precinct. Absent this information, we may have to
18 unnecessarily reject a ballot due to our lack of ability to
19 confirm this information."

20 Did I read that correctly?

21 A. Yes.

22 Q. And then I'm going to ask you to read the first
23 paragraph, or -- sorry -- the last paragraph on this page. And
24 let me know when you're ready for me to move to the next page.

25 A. Okay.

1 Q. And I'll ask you to read through the first full
2 paragraph, there, ending with "Voter registration database."

3 A. Okay.

4 Q. And are the paragraphs that I just directed your
5 attention to referring to the date-of-birth requirements,
6 specifically?

7 A. Yes.

8 Q. And, in these paragraphs, is the OAE0 describing what
9 they call a catch 22 on the date-of-birth requirement?

10 A. Yes.

11 Q. And they describe that -- and I'll read it exactly for
12 you so that I don't paraphrase -- the date of birth is an
13 additional piece of identifying information. However, we see
14 many mistakes made when voters fill out this field. For this
15 reason, many election officials do not believe it should be a
16 required piece of information. However, because this
17 information is required for a voter registration form, this
18 puts us in a difficult spot. Requiring the date of birth could
19 result in mistakes that affect our ability to count votes. Not
20 requiring it could mean we are not able to update a voter's
21 registration, and they would potentially be forced to vote
22 provisionally in future elections.

23 Did I read that correctly?

24 A. Well, I can't see the last part, but the first part.

25 Q. Okay. Thank you. Fair enough. Thank you, Senator.

1 A. Yes.

2 Q. So, in the next paragraph, they say: "Due to this catch
3 22 situation, we worked with the sponsor on an amendment to
4 solve this problem."

5 Correct?

6 A. Yes.

7 Q. And it states: "The amendment in question allows us to
8 do three things. First, it only requires us to match the day
9 and month of the birthdate. This will be helpful as voters
10 sometimes write down the current year in this field, as opposed
11 to the year they were born. Secondly, the amendment exempts
12 people whose birthdate appears as 1-1, 1800, in a statewide
13 voter registration database."

14 And, then, if you take a look, it says: "The committee
15 heard testimony last week as to the necessity of this change.
16 Finally, the amendment creates a catch-all to allow Boards to
17 count provisional ballots even when the date of birth does not
18 match our database so long as the Board can determine the
19 identity of the voter based on other information provided."

20 Do you see that?

21 A. Yes.

22 Q. And do you know whether the bill, as passed, did, in
23 fact, contain the amendment that the AOEO recommended?

24 A. I'm not sure on this one.

25 Q. Senator, you also described the circumstances

1 surrounding the passage of SB 205; is that correct?

2 A. Yes.

3 Q. And you are aware that SB 205 also had proponents,
4 correct?

5 A. If you say so, yes. I only say that because I wasn't in
6 the committee. So --

7 Q. Sure. And, again, as you testified, you did follow,
8 closely, this bill as it was introduced and considered by the
9 Senate, correct?

10 A. Correct, but not every single aspect. So I can't say
11 absolute, absolute that I know that there were proponents,
12 but --

13 Q. Thank you for that clarification, Senator.

14 A. Uh-huh.

15 Q. And I believe you testified that you recalled that
16 Senator Coley was the sponsor of this?

17 A. Yes.

18 Q. And I have put on the Elmo what's been marked as
19 Plaintiffs' Exhibit 1287. Can you tell me what this document
20 is?

21 A. It appears to be a copy of Senator Coley's testimony in
22 the Government Oversight and Reform Committee.

23 MR. CHANDRA: Same objection, Your Honor.

24 THE COURT: Overruled.

25 BY MS. RICHARDSON:

1 Q. And I'll direct your attention to the third paragraph
2 here that begins with "Whether."

3 A. Yes.

4 Q. And it states: "Whether you reside in Lima or Lowell,
5 Batavia or Bedford Heights, Hamilton or Hilliard, you should
6 play by the same rules. That is why I introduced Senate Bill
7 205. This bill contains a number of provisions to streamline
8 and clarify election laws related to absentee ballots."

9 A. Yes.

10 Q. Did I read that correctly?

11 A. Yes.

12 Q. I'll show you, now, what's been marked as Plaintiffs'
13 Exhibit 1286.

14 MR. CHANDRA: Your Honor, I just wanted to note the
15 time for the Court.

16 THE COURT: I'm keeping my eye on it. She has about
17 four minutes.

18 MS. RICHARDSON: Thank you, Your Honor.

19 BY MS. RICHARDSON:

20 Q. Senator, this is proponent testimony that was offered by
21 Steve Cuckler; is that correct?

22 A. Yes.

23 Q. And Steve Cuckler is a member of the Delaware County
24 Board of Elections; is that right?

25 A. Yes.

1 Q. And if you take a look at the bullet points here that
2 Mr. Cuckler has provided, the fifth bullet point down, it
3 states: "SB --"

4 MR. CHANDRA: Same hearsay objection, Your Honor.

5 BY MS. RICHARDSON:

6 Q. It states --

7 THE COURT: Overruled.

8 MS. RICHARDSON: Thank you, Your Honor.

9 BY MS. RICHARDSON:

10 Q. It states: "SB 205 is a step in the right direction in
11 terms of election law reform. We need more uniformity in
12 standards in Ohio, not less."

13 Is that correct?

14 A. That's what it says.

15 Q. And, in general, Mr. Cuckler is talking about the
16 process for mailing out applications for absentee ballots,
17 correct?

18 A. It appears.

19 Q. And do you know whether, at the time that SB 205 was
20 introduced, there was some confusion in terms of the mailing
21 out of absentee ballots?

22 A. When you say "confusion in the mailing out," I think --
23 do you mean that some Boards of Elections mailed out absentee
24 ballot applications and some did not?

25 Q. That's correct. Is that your understanding?

1 A. Yes. I wouldn't call it confusion. But, yes, that was
2 what was happening in the State of Ohio.

3 THE COURT: All right. Let's stop right there. And
4 you may resume with the Senator when she returns.

5 MS. RICHARDSON: Thank you, Your Honor.

6 THE COURT: Thank you, Senator.

7 THE WITNESS: Thank you.

8 MS. RICHARDSON: Thank you, Senator.

9 (Whereupon, the witness steps down from the witness
10 stand.)

11 THE COURT: Who is your next witness, Mr. Chandra?

12 MR. CHANDRA: We will be calling Lucas County, Your
13 Honor, a representative from Lucas County.

14 MS. GENTRY: Lavera Scott, Your Honor, from Lucas
15 County.

16 THE COURT: All right.

17 Ms. Scott, please come forward and be sworn.

18 - - -

19 LAVERA SCOTT,

20 AFTER HAVING BEEN DULY SWORN, TESTIFIED AS FOLLOWS:

21 CROSS-EXAMINATION

22 BY MS. GENTRY:

23 Q. Good afternoon, Ms. Scott.

24 A. Good afternoon.

25 Q. Thank you for coming in today.

1 Could you please state your name for the record?

2 A. Yes. It is Lavera Scott.

3 Q. Could you, please, spell your first name?

4 A. L-a-v-e-r-a.

5 Q. And you are currently the Deputy Director for the Lucas
6 County Board of Elections?

7 A. Yes.

8 Q. And you've been in that position since June of 2015?

9 A. Yes.

10 Q. Prior to that, you were the Interim Deputy Director for
11 the Lucas County Board of Elections; is that right?

12 A. Yes.

13 Q. And you were in that position from June of 2014 to June
14 of 2015?

15 A. Correct.

16 Q. Could you briefly describe your responsibilities as
17 Deputy Director as they relate to absentee ballots and
18 provisional ballots?

19 A. My main responsibility is to -- I'm currently
20 responsible for ordering the actual paper ballots that are used
21 for absentee ballots and provisional ballots, also doing any of
22 the ballot proofing, help assisting with approving ballot
23 language before we send it to the State. And I'm hiring
24 individuals to work in both of those areas.

25 Q. How many full-time staff does the Lucas County Board

1 have?

2 A. Twenty-four.

3 Q. And when it comes to processing absentee ballots and
4 provisional ballots, do you ever hire seasonal workers?

5 A. Yes.

6 Q. This past primary election, did you hire seasonal
7 workers?

8 A. Yes.

9 Q. Do you recall approximately how many seasonal workers
10 you hired to handle absentee ballots and provisional ballots?

11 A. There are approximately eight additional seasonal staff
12 working the absentee department. And then, for provisionals,
13 there were approximately eight, as well. Four of them were the
14 same employees that worked in absentee.

15 Q. Do those seasonal workers report to someone who is a
16 full-time staff member?

17 A. Yes, they do.

18 Q. And do those full-time staff members ultimately report
19 to you and to the Director?

20 A. Yes.

21 Q. I want to ask you about what -- Strike that.

22 Do you also have some responsibility with regard to
23 training the poll-workers and the seasonal workers with regard
24 to absentee ballots and provisional ballots?

25 A. In my current position, not day to day. In reference to

1 approving the materials that go out, yes. In my prior position
2 as Voter Services Manager, which I was prior to becoming
3 Interim, I did the majority of the training for both of those
4 areas.

5 Q. I want to focus -- first I'm going to ask you about
6 provisional ballots. And I want to start with how provisional
7 ballots are handled at the polling place on Election Day.

8 So, when a person comes in to vote and it's determined
9 that they need to vote a provisional ballot, do they go to a
10 special table or special poll-worker to help them with that
11 process?

12 A. Yes. Each of our locations has a provisional table.

13 Q. And does the poll-worker who works at the provisional
14 table have a special title or name?

15 A. No.

16 Q. So, after the provisional voter fills out the
17 provisional ballot affirmation form, does the poll-worker at
18 that table check the form to make sure it's completely filled
19 out?

20 A. They are trained to view the form, yes.

21 Q. Why are they trained to review the form for
22 completeness?

23 A. Because the person that is going to be issuing them the
24 paper ballot, as well, they check it to make sure that the
25 address -- normally, it's on there, if they can. That way, if

1 they have questions in reference to something that's missing,
2 they're trained to look at it.

3 Q. All right. You raised an excellent point. Let me try
4 to clarify something.

5 Does the voter fill out the provisional ballot
6 affirmation form before, or after, they receive their ballot?

7 A. They fill out the affirmation form, in our locations,
8 prior to.

9 Q. And, then, to determine what precinct that person should
10 vote in, does the poll-worker look at the address that the
11 voter wrote down on their form?

12 A. Yes.

13 Q. And then the poll-worker consults a street guide to
14 determine what precinct it should be?

15 A. Correct.

16 Q. And if the address that's written down on the form is
17 incomplete, what is the poll-worker trained to do?

18 A. They're trained to inquire as to clarification for the
19 address.

20 Q. And they need to do that in order to know what precinct
21 the person should vote in, correct?

22 A. Correct.

23 Q. Now, when a voter uses a form of ID that they can hand
24 to the poll-worker, is the poll-worker trained to check that ID
25 to determine whether it's current and valid?

1 A. They're trained to view it, yes.

2 Q. And after they have reviewed the ID, the poll-worker is
3 trained to check the box on the provisional ballot affirmation
4 form that states that an ID was provided; is that correct?

5 A. Correct.

6 Q. Why is the poll-worker responsible for checking that box
7 on the form?

8 A. For the identification itself?

9 Q. Yes.

10 A. If the poll-worker -- If you give the -- for instance,
11 most -- the majority of the provisionals we get, a lot of them,
12 the actual voter just writes in their Social Security number,
13 their last four digits. Therefore, there is no other boxes
14 that they need to check.

15 If they're not going to be giving, or showing -- if
16 they're not going to be providing the last four digits of their
17 Social Security number and they're using some other form of ID,
18 another type of paper form, that's when they are to check the
19 box, if they're going to be providing a utility bill or
20 something like that.

21 Q. And why do you train the poll-worker to check the box,
22 instead of just relying on the voter to figure out that they
23 need to check the box?

24 A. Well, when the -- How can I say this? When the voter is
25 given the envelope, I can say that most -- the majority of the

1 voters because I also manage an early vote center -- so, there,
2 I have more direct interaction with a lot of the voters. If
3 it's anything other than the last four digits of their Social
4 Security number, a lot of the times they don't know
5 which things they are supposed to do.

6 So the followup of the poll-worker is that, if it's not
7 on there -- they are to verify that information. As I stated,
8 they are to review and verify it. If the voter does not put it
9 on there, they are to review it. That is part of the training.

10 Q. And they are to check the box?

11 A. Yes, if the -- if the voter failed to do so.

12 Q. Okay. So there are times when the voter doesn't
13 understand that they need to check a box, as well as show their
14 ID?

15 MS. CARWILE: Objection. Speculation.

16 THE COURT: Overruled.

17 MS. CARWILE: Thank you.

18 BY MS. GENTRY:

19 Q. You can answer.

20 A. I can assume that. I mean, I would assume so.

21 Q. Based on your experience actually working with voters at
22 the early vote center, have you observed that sometimes voters
23 don't understand that, after they hand the ID over, they also
24 have to go back and check a box?

25 A. It's usually a simultaneous thing that happens there,

1 to, whereas, when you're filling out the actual envelope, if a
2 voter comes up afterwards and they don't have it completely
3 filled out, then they would fill it out for them, or they would
4 give it to the poll-worker.

5 In our -- In the early vote center, it's a little bit
6 different, because it's absentee voting initially. But, in any
7 forms they fill out, I have definitely witnessed that sometimes
8 voters are not sure which boxes they should fill out.

9 Q. And your poll-workers are trained to assist them in
10 figuring out what should be filled out, correct?

11 A. Yeah. That's part of the training.

12 Q. Why do you train your poll-workers to assist the voters
13 if they're confused or they don't understand what to do?

14 A. Personally, I mean, we are mandated to provide
15 poll-worker training. And, I mean, the -- the guidelines that
16 we receive are pretty specific. I mean, at any time, going --
17 if you can go a little extra to assist the voter, it's just
18 something that they're trained to do, to try to ensure that
19 every voter that's theirs can be -- their needs can be met. If
20 you can at all do it, then we ask them to do it.

21 Q. Your poll-workers will assist the voter even if the
22 voter doesn't say, I'm disabled and I need help, or, I'm
23 illiterate and I need help; is that correct?

24 A. If they're assisting them in reference to paperwork or
25 anything like that just in reference to -- There's a difference

1 between assisting a voter and voting, per se.

2 If they are disabled or they -- then we have to have
3 them fill out the form. And our poll-workers and bipartisan
4 teams assist the voter with actual -- the voting process.

5 In reference to completion of paperwork, if they state
6 that they need assistance, by the same token, we have a
7 bipartisan team that is there to assist them in completing that
8 if they request it.

9 We cannot assume, with anyone -- we cannot gauge,
10 necessarily, if a voter may need assistance if they don't state
11 it. But they are trained, if the information is missing, to at
12 least try to ascertain what help is needed.

13 Q. Okay. With regard to the review of provisional ballots
14 after the election, it's correct, is it not, that sometimes
15 seasonal workers will review the provisional ballots to
16 determine whether the information is complete and correct and,
17 therefore, the ballot can be counted?

18 A. Correct.

19 Q. And I believe that they sit in a room together, to
20 process the provisional ballots, along with two staff members
21 who are there to supervise and answer questions?

22 A. Right. A minimum of two full-time staff is at where we
23 process provisionals at. In our office, we do all of our
24 post-election activities at our early vote center. So there
25 are, at a minimum, two full-time staff that are there for the

1 process of processing the provisionals.

2 Q. And the review of the provisional ballot is conducted by
3 just one person -- is that right? -- of a particular
4 provisional ballot affirmation form?

5 A. The initial review, yes. The processing itself, yes.

6 Q. And that involves -- I believe you testified in your
7 deposition that there is a bipartisan approach in the sense
8 that Republicans and Democratic workers sit next to each other
9 while they're processing their own stacks of ballots. Is that
10 fair?

11 A. Yes.

12 Q. Now, if a ballot is -- if a person conducting the
13 initial review concludes that the ballot should be counted
14 because the form is correctly and completely filled out, is
15 there any second level of review that's conducted?

16 A. There is a second level of review for all of the
17 provisionals. Once all of the provisionals are processed,
18 there -- they run an audit list, itself, which is going to show
19 all the provisionals that were entered. And then a minimum of
20 those two full-time staffs, sometimes other managers, depending
21 on who's available, as well, do a second review, partially just
22 to make sure that the numbers are correct, to make sure that
23 every one that we accounted for is actually entered, and to
24 make sure that the names and things are correct on there.

25 So most provisional ballots are reviewed a minimum of at

1 least two times in reference to checking to make sure that
2 they're entered properly.

3 Q. Let me break it down a bit so I can be a little more
4 specific.

5 In the initial review, will the reviewer compare the
6 Social Security number, if that's provided, against the Social
7 Security number in the voter registration database to make sure
8 they match?

9 A. Yes.

10 Q. All right. And, then, in the second level of review,
11 does the reviewer do the same thing? Do they also take the
12 Social Security number and look at the database to see if they
13 match?

14 A. No.

15 Q. And with regard to an address, can you describe what
16 review the initial reviewer does to confirm whether there is a
17 valid address on the form?

18 A. We look into our local -- our database. And if it's an
19 address -- We have a lot of new, for instance, subdivisions
20 where we have a lot of new addresses at. And if they have any
21 questions in reference to research of those, those are actually
22 turned over to one of the IT managers, that may need to look up
23 addresses to doublecheck to make sure that the precinct that
24 they voted them in, especially if it's a new area, is, indeed,
25 the precinct that they should have voted in.

1 Q. Do you know what database the IT person reviews to
2 determine whether the address is correct?

3 A. We use ARIES, which is the County data GIS system that's
4 also used by the Auditor's Office.

5 MS. GENTRY: Your Honor, I'm going to show the witness
6 a few documents. So this might be a good time to read into the
7 record the exhibits that we have stipulated to admitting.

8 THE COURT: Please proceed.

9 MS. GENTRY: Thank you, Your Honor.

10 My understanding -- and, Ms. Carwile, correct me if I'm
11 wrong -- is that we have stipulated to the admission of
12 Plaintiffs' Exhibits 988 through 998, 3453 through 3709, and
13 7026 through 7033.

14 MS. CARWILE: That is correct, Your Honor.

15 THE COURT: All right. Thank you, Ms. Carwile.

16 Those documents will be admitted.

17 MS. GENTRY: Thank you, Your Honor.

18 BY MS. GENTRY:

19 Q. Ms. Scott, I'm showing you what's been marked as
20 Plaintiffs' Exhibit 3454. This is a voter named David Bell.
21 And his vote -- his provisional ballot was rejected because of
22 a lack of an address, which I can show you.

23 The second page of the exhibit contains this page from
24 your provisional statistics report. And do you see that David
25 Bell's vote was rejected for lack of an address?

1 A. Correct.

2 Q. Now, he does have a street address on his form. Do you
3 see that?

4 A. Uh-huh.

5 Q. Can you explain why that was not sufficient?

6 A. I can tell you that I know that that address is flagged
7 in our system. That is a U.S. postal address on 724 Dussel.
8 So, therefore, it is not a residential address.

9 Q. Did you mean 427 Dussel?

10 A. Yes. I'm sorry. 427 Dussel.

11 Q. So it's a commercial address, first of all, correct?

12 A. Correct.

13 Q. Are you allowed to -- Are voters allowed to use
14 commercial addresses as their street address?

15 A. No.

16 Q. And, then, it's also a place where mail is delivered,
17 correct?

18 A. Correct.

19 Q. And the Secretary of State has instructed the Boards of
20 Elections not to allow voters to use such addresses for their
21 registration and for voting purposes; is that right?

22 A. Correct.

23 Q. Do you make any inquiry as to whether voters who use
24 commercial addresses are homeless, for example, and reside
25 outside of the building?

1 A. We don't make inquiries. At the time, if someone uses
2 that address to attempt to register, then they -- Of course,
3 all voters that are sent letters stating that they cannot be
4 registered due to whatever the reason was. And this person
5 would in turn, based upon that, be sent that same letter in
6 reference to stating that that was not a residential address.

7 THE COURT: Excuse me for one second.

8 MS. GENTRY: Yes, sir.

9 (Whereupon, there was a brief interruption.)

10 THE COURT: Please proceed, Mrs. Gentry.

11 MS. GENTRY: Thank you, Your Honor.

12 BY MS. GENTRY:

13 Q. Ms. Scott, we were talking about this particular ballot
14 that's in front of you and the issue of commercial addresses.
15 Is it your understanding that if a person actually lives at the
16 location of a commercial address -- for example, if they lived
17 above the business or in the back room or in the basement --
18 could they use it as their voting address?

19 A. Yes.

20 Q. Now -- I'm sorry. Go ahead.

21 A. And there are some places within our city that that has
22 occurred.

23 This particular address is a United States Post Office.
24 There is no residential at that address.

25 Q. Okay. Just taking --

1 THE COURT: Just a P.O. box?

2 THE WITNESS: Yes. It's an actual post office.

3 THE COURT: Oh! So the address is the location of the
4 post office, itself?

5 THE WITNESS: Exactly.

6 THE COURT: I see.

7 THE WITNESS: Exactly.

8 BY MS. GENTRY:

9 Q. Taking what you said about commercial addresses, how
10 does the Board know if a person is living at a commercial
11 address?

12 A. Our current system that we use, as I stated, is linked
13 to ARIES, which is part of the Auditor's Office, which zones,
14 of course, for commercial addresses. So, because our system is
15 built upon those, those that come up as commercial addresses
16 are flagged in our system.

17 There are some addresses that we've actually had to have
18 our IT manager drive by to see if there was residential
19 addresses. So we're well aware that it can occur because it
20 has occurred in our county before.

21 Q. And the only way you know it has occurred is by actually
22 going to drive out and see if somebody is living there?

23 A. Correct. Once we -- We'll send a letter to them, as I
24 stated, to anyone, in reference to their registration. And
25 there have been instances where they've stated, Well, this is

1 my current address, and we've been able to verify that and
2 register them at that address.

3 Q. All right. Now, with regard to Mr. Bell, his ballot was
4 not rejected because he wasn't a registered voter, correct?

5 A. Correct.

6 Q. All right. So, it's fair to assume that he is a
7 registered voter in the State of Ohio?

8 A. At that time, I would assume, yes.

9 Q. All right. Do you know whether Mr. Bell was given any
10 notice that his provisional ballot was rejected because he's
11 using an address that he can't use?

12 A. I don't -- There was no notice sent to him besides the
13 hotline form given to all voters so they can call to verify.
14 At that point, he would have been told. But I can't say if
15 this individual called or not, no.

16 Q. And that notice you're talking about with the hotline,
17 that's given to all provisional voters, correct?

18 A. Correct.

19 Q. Or it's supposed to be, correct?

20 A. Correct.

21 Q. You don't actually know if it's given to all provisional
22 voters, but your workers are trained to give it out, correct?

23 A. They're trained to give it out, yes.

24 Q. And that requires the voter to read it and understand
25 that they can call a number and determine if their vote has

1 been counted?

2 A. Correct.

3 Q. That requires some affirmative action by the voter,
4 correct?

5 A. Correct.

6 Q. But you're saying there was no notice to Mr. Bell,
7 affirmatively, by the Board, to let him know his vote was
8 rejected and why?

9 A. No. There is -- There is currently no -- no procedure
10 stating to send notification to provisional voters that their
11 vote was not counted.

12 Q. Is there any reason why the Board could not provide that
13 notice?

14 A. Our Board -- if it's not currently mandated, no.
15 We -- We don't tend to make up our own rules and send out
16 additional notice not mandated for us to do.

17 Q. So you only do what you're mandated to do?

18 A. Correct, in reference to notices.

19 Q. Ms. Scott, now I'm going to show you what's been marked
20 as Plaintiffs' Exhibit 3455. This is Mr. Bell's provisional
21 ballot from the next year, from 2015. And if you'd like, I can
22 put this back, the other one, back up so you can compare and
23 confirm that this is the same person.

24 Do you see that their Social Security numbers are the
25 same?

1 A. Yes.

2 Q. And the birthdate is the same?

3 A. Yes.

4 Q. So this is the same David Bell who voted a provisional
5 ballot two years in a row, correct?

6 A. Correct.

7 Q. And both ballots were rejected because he wrote down the
8 address of 427 Dussel?

9 A. Correct.

10 Q. Unless Mr. Bell takes the initiative to call and find
11 out if his vote was counted, he has no way of knowing that his
12 votes will never be counted so long as he uses that address; is
13 that right?

14 A. In reference to voting, no. But he would -- he should
15 have also been sent a letter stating he was unable to be
16 registered at that address if he was doing a change of address.
17 I don't know if that was a change of address for him or if he
18 also has another address listed without looking at his file. I
19 don't know if he has another address listed in his file or if
20 he's only using that for provisionals.

21 Q. Okay. And with regard to registration, is it your
22 understanding that the Board uses provisional ballots as a way
23 to register voters who are not registered, correct?

24 A. Correct.

25 Q. But the Board doesn't do that for voters who are already

1 registered, correct?

2 A. As a change-of-address form, yes.

3 Q. So, you would -- you believe that the Board would have
4 sent him a change-of-address form?

5 A. If it was a valid change, he would have received -- If I
6 move from a correct, or proper, address and an address that can
7 be precincted, yes.

8 The address Dussel cannot be precincted because it's
9 listed as a post office address. So he would have received a
10 letter to state that that address -- in reference to him doing
11 a change of address. But I don't know, without looking at his
12 file, if he also has that as a mailing address, only which he
13 can do, or if he has it listed as -- attempted to list it as a
14 personal address as well.

15 Q. And you also don't know, without looking at his file,
16 whether he, in fact, was sent a change-of-address notice?

17 A. Correct.

18 Q. All right. Ms. Scott, I'm going to show you what's been
19 marked as Plaintiffs' Exhibit 3462. This is another individual
20 who used the same address, 427 West Dussel. Do you see that?

21 A. Yes.

22 Q. And his ballot was also rejected for a lack of an
23 address. Do you see that right there (indicating)?

24 A. Yes.

25 Q. And it's your understanding that this individual should

1 also have received a change-of-address card?

2 A. Yes.

3 Q. But you don't know whether that was done?

4 A. No.

5 Q. All right. I'm going to show you Plaintiffs' Exhibit
6 3460. This voter was also rejected for lack of an address,
7 Moore is the last name. Can you tell me why this voter was
8 rejected for lack of an address?

9 A. Not without the database, no.

10 Q. But you see that she wrote -- to the street address, she
11 wrote Airport Highway, Apartment E. Do you see that?

12 A. Uh-huh.

13 Q. Does that have any meaning for you, as someone who lives
14 in Lucas County?

15 A. No. Airport Highway is several miles long. There would
16 be no way to precinct her based upon just Airport Highway.

17 Q. And then, in the city field, she wrote 1 Clare Commons.
18 Do you see that?

19 A. Uh-huh.

20 Q. Is that a "yes"?

21 A. Yes.

22 Q. Clare Commons, does that have any meaning to you?

23 A. Not at all.

24 Q. So you don't know if that's a subdivision or a street or
25 an apartment building, correct?

1 A. Correct.

2 Q. But the person who reviewed this ballot should have
3 reviewed the database to determine if they can figure out what
4 1 Clare Commons is?

5 A. There would be no way to search for the word 1 Clare
6 Commons in the voter registration database.

7 Q. Would there be a way to search for it in another
8 database? I'm sorry?

9 A. Probably -- Depending if it's a proper name and not just
10 a name that someone assigns to it, then the IT manager that
11 does the street and range road guides would probably be able to
12 try to ascertain if that's truly a building name properly used
13 within the County.

14 Q. Could your reviewers or IT person use Google to
15 determine what Clare Commons is and if it's an apartment
16 building?

17 A. I'm sure he could.

18 Q. Are they trained to?

19 A. No, they're not trained to use Google to search things.
20 I'm not sure what our IT manager -- I cannot speak for him. I
21 do not know all resources that he utilizes. But he's
22 worked -- He worked for the County -- the Auditor's Office,
23 himself, for over 20 years. So he would probably have a much
24 better -- broader knowledge of where to look for addresses than
25 I ever would.

1 Q. Is it fair to say that he -- What's his name?

2 A. That would be Martin Limmer.

3 Q. Martin Limmer, is a he a Republican or a Democrat?

4 A. He's a Republican.

5 Q. And he has the discretion to determine what he's going
6 to search to find out whether or not he can -- he can identify
7 this address?

8 A. No. If -- If an address is turned into him, there is an
9 actual file -- If people have questions in reference to
10 addresses, there is an actual file that they can go into. And
11 then he, in turn, posts whatever addresses he's asked to search
12 for anybody that's doing any type of data entry, any new
13 subdivisions, annexations, all of those things.

14 Q. But in terms of what databases he decides to search --
15 for instance, if he decided to search Google Maps -- he would
16 have the ability to do that, correct?

17 A. If he chose to, yes.

18 Q. And there is no Board policy as to what he is or is not
19 permitted to search or required to search?

20 A. There is no Board policy, no.

21 Q. I'm going to show you what's been marked as Plaintiffs'
22 Exhibit 3480. This is a 2015 provisional ballot. And we did
23 not receive information about why the specific 2015 ballots
24 were rejected. So I don't actually know why this was rejected.

25 And my question to you is, by looking at it, can you

1 tell why this was rejected?

2 A. No, not without looking at the list. They
3 have -- Unless there was, truly, no identification shown, I
4 would have assume in reference to what's checked on there.

5 Q. What do you mean?

6 A. In reference to the last box. It appears that the last
7 box is checked on here to state that they had some additional
8 type of government ID.

9 Q. So it should not have been rejected for lack of ID,
10 correct?

11 A. Not if it -- not if they showed -- not if the voter
12 truly provided it, no.

13 Q. Well, the reviewer would have no way of knowing whether
14 the voter truly provided it, correct?

15 A. Correct.

16 Q. The reviewer should assume that if the box is checked,
17 then the ID requirement is satisfied, correct?

18 A. Correct.

19 Q. Are your reviewers trained to accept any provisional
20 ballot where that box is checked in terms of the ID
21 requirement?

22 A. Yes, unless there is any accompanying notes or anything
23 stating otherwise, yes.

24 Q. Are you aware of any accompanying notes that have
25 indicated that ID was not provided?

1 A. For this particular one, no.

2 Q. In general, for any voter, any provisional voter?

3 A. Usually, if there is something that needs to be brought
4 to attention, some poll-workers will make sure that they do
5 list a note in their judge's notes. Or if they forgot to mark
6 a box, sometimes they'll even write that down.

7 So, if there is any specific instances that they want to
8 notify us of, then the judge's notes give them an opportunity
9 to do that.

10 Q. Do your seasonal workers and full-time staff who review
11 the provisional ballots have access to the judge's notes?

12 A. As needed, yes.

13 Q. And how would they know if they needed to review the
14 judge's notes?

15 A. During the official canvassing process, before any
16 provisionals are counted, judges' notes are a part of the
17 provisional -- of the official canvassing. Those are
18 available, and they are with every precinct before official
19 canvassing. And that is before any provisionals are ever
20 counted.

21 Q. But are they given, physically given, to the reviewer
22 who sits in a separate room looking at hundreds of ballots?

23 A. No, but they're given to the people doing the canvassing
24 of the provisionals who have the provisional list at that time.
25 So, if there is any notes or anything that will come up, there

1 have been times where a voter -- where the worker has clearly
2 written "no" that a provisional that may have been questionable
3 before or something was missing, the judges' notes have stated,
4 This person did provide this, or I forgot to notate this; and
5 we've had to go back to fix the provisional and ballot itself.
6 So at the time the official canvassing is done, before they're
7 actually counted, before the Board votes on those, that
8 information is available.

9 Q. Okay. So it's available to later reviewers, but not the
10 initial reviewers?

11 A. Correct.

12 Q. And are your later reviewers instructed to make sure
13 that they fix any discrepancies that they see?

14 A. Yes.

15 Q. One more question on this. If you were, today, to go
16 back and try to figure out why this ballot was rejected, is
17 there a way to do that?

18 A. No. Besides looking at the database, no. I don't know
19 exactly what this person was thinking at that time. Besides
20 directly talking to just workers or trying to get them to
21 remember what occurred, no.

22 Q. And you don't know which worker made the decision not to
23 count this ballot, correct?

24 A. Yes. By looking up the voter, themselves, there is an
25 electronic footprint that would tell me who actually processed

1 that.

2 Q. Now, am I correct that that electronic footprint you
3 talk about is erased after every election cycle to make room
4 for the new election cycle?

5 A. No. The actual transaction, itself, will -- we could
6 always go back to see who processed something. It's not going
7 to be in the module for normal workers to look at, but
8 everything is archived.

9 Q. Okay. So the IT person could go back and find out who
10 processed it, correct?

11 A. Yes.

12 Q. And, then, you would need to talk to that person to find
13 out why they rejected it?

14 A. To see if they remember, yes.

15 Q. There is nothing else written down as to why this ballot
16 was rejected?

17 A. No, not to the best of my knowledge. No.

18 Q. Okay. I am going to turn, now, to absentee ballots.

19 Oh! Before I do that -- I'm sorry -- I do have a few
20 more questions.

21 Going back, I just want to ask you about the different
22 fields.

23 Do your reviewers reject a provisional ballot if the
24 name is written in cursive, instead of being printed?

25 A. No.

1 Q. All right. Okay. Thank you. When the Board makes a
2 decision as to what ballots to count, it makes that decision
3 based on categories of ballots, correct?

4 A. Correct.

5 Q. Can you describe that process?

6 A. All of the provisional ballots are counted and separated
7 into all valid, in ward precinct order, all invalid, in ward
8 precinct order, with the specific categories as to why they
9 were reviewed, the reason -- when they were reviewed, what was
10 determined by the user. And then all of those ballots are
11 taken to the Board meeting and given to the Board; at their
12 discretion, how many they actually, physically look at. There
13 is a list. We make sure that the ballots are in the same order
14 as the list. And we take them to the Board meeting.

15 Q. And in your experience in the November 2014 election and
16 November 2015 election, did the Board review individual
17 provisional ballots and vote whether to accept or reject
18 individual ballots?

19 A. There were some in reference to birthdate. I don't know
20 exactly which election it was. But, each election, there is
21 usually some that they may have questions about that were
22 deemed, especially with the birthdate issue, because of all the
23 other criteria, of course, is there, the Board can choose to
24 accept those.

25 So that is definitely one category that we bring to

1 their attention. All the other ones, they can go through them.
2 Some, they have particular questions about. Some, they do not.
3 It's just truly up to the Board.

4 Q. And based on your recollection, does your Board have a
5 policy of whether to accept ballots where the date of birth is
6 incorrect but the other information is correct?

7 A. Yes. And from my experience, that has been the issue.
8 If all the other information has been correct, they have
9 accepted those.

10 Q. When, generally, after the election does this meeting
11 that you're talking about occur where they go through the
12 provisional ballots and determine what to count?

13 A. Sometime before certification. I mean, each Board is
14 different. And their schedules are different. But it occurs
15 anywhere -- sometimes it's the 12th day after the election,
16 depending on when they must send the results to the State.
17 It's usually one or two days before. Sometimes it's -- if it's
18 a very small number of provisionals, it may be four days
19 before. It just depends upon the Board.

20 Q. And is it your understanding that that meeting to review
21 provisional ballots cannot be held until at least ten days
22 after the election?

23 A. Correct.

24 Q. Now I want to turn to absentee ballots. What is the
25 process for an in-person early voter who walks into the Board

1 of Elections to vote?

2 A. When they walk into our early vote center?

3 Q. Yes.

4 A. There is check-in tables, electronic. We use -- Our
5 actual voter database is in our early vote center. So the
6 voters walk up to the first check-in table. They give their
7 name. The voter -- The worker looks them up in the computer.
8 They give them the absentee application to fill out. They fill
9 that out. They take it up to the second area, to where they're
10 processed at. And, after that point, they're issued either
11 their paper ballot or a TSX card to vote.

12 Q. Okay. Moving back to when they're issued an
13 application, does the worker print a label that has their name
14 and address on it and put it on the application?

15 A. That's after they're processed. When you initially come
16 in, you initially come in, you just come in. You give them
17 your name. They give you your application to fill out at that
18 point.

19 Q. Okay. At that point, they have to write their name and
20 address and everything else?

21 A. They do that at the table. When you come in, the first
22 thing is just a check-in. That's it. It's just a check-in
23 because some people, if you determine at that point that the
24 person has moved and they need to vote provisionally, then they
25 will let them know that at that point when they check in.

1 Q. Okay.

2 A. They do not issue them anything from the computer at
3 all. The only thing they hand them is the absentee application
4 to complete.

5 Q. And after they complete the application, they then take
6 that back to the counter so that it can be reviewed?

7 A. After they complete the application, they take it to the
8 processing area, where it's actually processed at that point.
9 It is directly into our normal registration system. It is all
10 of the same protocol that, you know, that we use for even
11 mailing the absentees.

12 They enter the absentee application into the database.
13 And then the person -- There is a label that is printed out.
14 It has the person's name, has the person's address. And there
15 is an actual signature book that is created. The person is
16 asked to verify their name and address, just to make sure that
17 it's correct. They sign, and then they get their ballot,
18 whether it's a paper ballot or a TSX card.

19 Q. Do they also have to provide their date of birth and ID
20 on their application?

21 A. On the application, itself. But they are not -- and the
22 workers are trained to tell them that their identification,
23 itself, is not needed, simply because they are absentee voting.

24 Q. What do you mean by that?

25 A. When people want to give you -- want to physically give

1 you a driver's license or physically give you my State ID.

2 Q. And that's not required?

3 A. Not for absentee voting.

4 Q. Okay. So it's just name and address that is required,
5 and then a signature?

6 A. On the application, itself, you put your identification
7 just as you would in any -- on the absentee application. But
8 some people are in the habit of voting at a polling location.
9 So, when they walk in the door, they think they have to hand
10 you a driver's license, when, in fact, we give them the
11 application to fill out.

12 On the application, they complete the necessary fields,
13 which is their name, their address, their identification, their
14 signature.

15 Q. Okay. Okay. Thank you for clearing up my confusion on
16 that point. And, so, when they actually -- to get the
17 ballot -- after their application is approved, in order to get
18 the ballot, they need to verify their name and address?

19 A. They've already -- You're signing next to -- It prints
20 out a label. And the label is going to say Lavera Scott. It's
21 going to have my address on it. And the only thing that they
22 do, they're signing next to that, just as they would in a
23 normal signature type of book.

24 And, at that point, they've already filled out their
25 application. They're already completed. And it's partially

1 just to doublecheck to make sure that the person that is doing
2 the data entry didn't put Lavera Scott, Jr. -- excuse me -- or
3 Lavera Scott, Sr., those types of things. It's just a
4 verification to make sure that I, as a person processing your
5 application, pulled the correct voter in.

6 Q. Okay. I understand. And, just to confirm, they don't
7 need to show ID or write their date of birth at that stage,
8 correct?

9 A. No. The only place they do that is on the actual
10 application itself.

11 Q. Okay. So, after they sign where their name and address
12 is, they have a choice of either getting a paper ballot or --
13 you said a TMX card?

14 A. Everybody is issued -- Our county is -- excuse me. We
15 use DREs. So they're automatically going to be offered,
16 normally, a voter access card to go vote on the TSX machines.
17 You have some voters that request a paper ballot, which they
18 can do. And if they request a paper ballot, then we issue them
19 the paper ballot.

20 Q. Do you also issue -- The voters who request a paper
21 ballot, do you also issue them an ID envelope?

22 A. Yes.

23 Q. And then they need to fill out that ID envelope
24 completely?

25 A. Correct. The ID envelope is going to have the label,

1 the same label that goes on the application. For paper
2 ballots, it prints off three copies, instead of two, so they
3 don't need to rewrite their address and things on there. But
4 they just fill out the ID envelope there. And the ID envelope
5 is deposited into the ballot box, or their ballot, once they're
6 done voting.

7 Q. Does anyone at the Board of Elections check their ID
8 envelope for completeness before they deposit it into the
9 ballot box?

10 A. If there is someone on the floor available -- I can't
11 say that every single one of them is checked; but, generally,
12 we have enough people that -- in all honesty, most people that
13 fill out paper ballots, some of them do require a little bit
14 more assistance. And there is usually a person -- we always
15 have a person available on the floor that actually takes the
16 TSX cards or directs the voter to the ballot box. And one of
17 the things that they're trained to do is just say, Please make
18 sure that your envelope is completed properly, although it's
19 written on the envelope. It's the same person that would
20 normally take the TSX card from the voter once they're done
21 voting.

22 Q. Why do you say that some voters require more assistance?

23 A. Some voters do. My experience, a lot of the voters that
24 come to vote paper are -- some people just like voting paper.
25 Some of them tend to be slightly older, more mature; and they

1 just choose to vote paper ballot. And, so, sometimes they may
2 need more assistance in reference to the fact of making sure
3 that they know where to put the ballot at, that they -- and if
4 at any point we have to have a team read ballots to people, no
5 matter what age they are, then, of course, as I stated before,
6 we have to have a bipartisan team assist them.

7 Q. And have you also had to have a bipartisan team read the
8 form to people?

9 A. Yes, we have had to do that, as well.

10 Q. And in order to do that, does the voter have to request
11 help on the basis of being disabled or illiterate?

12 A. They don't have to say that. If they just tell us that
13 they need assistance, we have a bipartisan team to assist them.

14 Q. Okay. And just so I'm clear, the voters who choose to
15 vote on the machine never have to fill out an ID envelope; is
16 that right?

17 A. Correct.

18 Q. Now, can you describe what the process is for reviewing
19 ID envelopes to determine whether they're complete and correct
20 and, therefore, the ballot inside can be counted?

21 A. Once the ballots are received in our office, we have
22 teams of workers that we use -- we have a bar code on our -- on
23 our actual envelopes which is unique to that voter. We run
24 those bar codes in so that we bring up the voter that's
25 associated with that envelope. And then, at that point, that

1 voter's information is populated on the screen, which would
2 have their name, their address, their ID, all of their criteria
3 needed.

4 The person that's checking them checks the face of that
5 envelope against the face of what's on the actual screen. And
6 then they have to initial in the corner, once they're done with
7 it, in reference to checking that envelope.

8 If for any reason something is missing on the envelope,
9 then they are to circle what's missing and put those with the
10 ones that would be challenged, because those are the ones that
11 we would have to send the letters to, that would be missing
12 something on their ID envelope.

13 Q. When you say "the letters," you mean the Form 11-S?

14 A. Yes.

15 Q. You mentioned that there is a bar code that's unique to
16 each voter; is that right?

17 A. Correct.

18 Q. And it's placed on the ID envelope?

19 A. Correct.

20 Q. So, when that envelope comes back, you can look -- you
21 can run the label and verify who that ballot was issued to,
22 correct?

23 A. Correct.

24 Q. And, then, so long as they sign it, you know who
25 actually filled out the envelope and returned the ballot,

1 correct?

2 A. I wouldn't assume that. But I could say that, if the
3 signatures match, we know that person signed it, yes.

4 Q. Okay. All right. I'm going to show you what's been
5 marked as Plaintiffs' Exhibit 3672. And this voter was born in
6 1913. And the vote was cast, I believe, in 1914 -- let's
7 see -- oh, no -- 1915. So she was more than a hundred years
8 old at the time; would you agree?

9 A. Correct.

10 Q. And it appears that this vote -- that this ballot was
11 rejected because of the Social Security number; is that right?

12 A. Yes.

13 Q. And you can tell that because it's circled?

14 A. Correct.

15 Q. All right. I'm going to show you the application, which
16 is the second page. Now, can you compare -- Sorry.

17 Can you compare the Social Security number on the
18 application with the Social Security number on the ID envelope?

19 A. Yes.

20 Q. Are they the same?

21 A. It appears so, yes.

22 Q. And, then, there is a note next to the ID number on her
23 Social Security number on the application. Do you see that?

24 A. Yes, I -- I can see it. I don't know what it states,
25 but I can see that there is a note.

1 Q. Let me see if I can zoom in.

2 All right. Can you read that note now?

3 A. Yes.

4 Q. What does it say?

5 A. "Per call this is right."

6 Q. Okay. So that indicates, does it not, that the 8301 is
7 the correct number?

8 A. Correct.

9 Q. When the reviewer checked this ballot, they didn't look
10 at the application form, did they?

11 A. No.

12 Q. They only looked at what was in the database, correct?

13 A. Correct.

14 Q. And it's reasonable to infer that the number 8301 was
15 not in the database, correct?

16 A. Correct.

17 Q. So this ballot should not have been rejected; is that
18 right?

19 A. Correct.

20 Q. And it was only rejected because the information in the
21 statewide database, or the county database, was incorrect?

22 A. I would assume so, yes.

23 Q. That's what it appears to be?

24 A. Yes, either -- correct or missing. With it being that
25 old, I don't even know if they had to provide them at that

1 point. I don't know when she had actually registered herself,
2 or if it was prior to having to provide your Social Security
3 number. If they would have used a generic -- If she registered
4 a very long time ago, before that was part of her actual file,
5 I don't know that without looking at the actual registration.

6 Q. Okay. That answer raises a couple of issues that I want
7 to ask about. One is in terms of what's required for
8 registration. Is it your understanding that, today, if a voter
9 registers, they have to provide their date of birth and their
10 ID?

11 A. Correct.

12 Q. But if a voter registered 30 or 40 years ago, they did
13 not have to provide their date of birth and ID; is that
14 correct? Or do you know?

15 A. I know that the ID requirements have changed. I don't
16 know exactly when it changed. I know that, for some voters
17 that have been registered with us, the birthdates were not part
18 of their original registration.

19 Q. Okay. And the ID, also, was not part of the
20 registration?

21 A. Correct.

22 Q. Now, do you train your workers that, if they are trying
23 to match an ID with the database and they're looking at a
24 Social Security number on the form, but there is nothing in the
25 database, should they reject the ballot or count the ballot?

1 A. They should inquire with someone as to either pulling
2 the original registration or ask someone else. That's what
3 they're trained to do.

4 Q. Okay. And, then, that person that they ask at the
5 supervisory level, or if it's yourself, what do you do if you
6 cannot match the Social Security number because it's just not
7 in there anywhere?

8 A. If it's not in the database itself, then, on the
9 registration form itself, as this one stated -- This was okay
10 per the telephone call -- that was on there -- if it's
11 information -- what I've determined is that, if it's missing
12 information and we ask people to update the registration, they
13 normally will.

14 I know that, personally, our county sent out letters, in
15 2013 and '11, to all voters that did not have date of births or
16 had birthdates of the one, one, nine, nine, nine, or the 1900.
17 And so we did send letters, and we did receive quite a few of
18 those back to be able to add that information to people's
19 registration system. So we would, in turn, do that to people
20 that don't have that. We do send letters out to those voters.

21 Q. Okay. And I understand that that might help for future
22 elections, but this lady is a hundred years old. She might not
23 get to vote in another election. What happens to her ballot if
24 the 8301 is not in the database and it's nowhere in her voter
25 registration card?

1 A. Well, on this one, like I said, without looking at it, I
2 can't tell you exactly what's in here. I'm going to assume,
3 based upon what is written, that it is not. But I cannot tell
4 you exactly what's in here for myself, no.

5 Q. And I understand that you don't know. Let me make it a
6 broader question.

7 For any voter who does not have a matching ID in the
8 database -- it's simply not there -- but they've written down
9 an ID, should their vote be counted or rejected?

10 A. According to our current procedure and laws, it would be
11 rejected.

12 Q. Okay. Thank you. Now, when you say the ballot should
13 be rejected, if it's an absentee ballot, is that decision made
14 by the Board?

15 A. The Board also receives -- For all absentees, no, unless
16 there is ones that are questionable, like the date-of-birth
17 issues. Those normally go to the Board.

18 Q. But if it's not an issue that's either questionable or a
19 date-of-birth issue, then the staff would make a decision as to
20 whether to count or reject?

21 A. Correct.

22 Q. Okay. And the one we just looked at with the
23 hundred-year-old voter that, apparently, the ID didn't match,
24 that would have been a staff decision?

25 A. Correct.

1 Q. Can you -- Strike that. Have you heard the term "voter
2 credit"?

3 A. No.

4 Q. All right. Are you familiar with the concept of giving
5 a voter credit for voting; even if their vote isn't counted,
6 you still show in their history --

7 A. Yes.

8 Q. -- that they voted?

9 A. Correct.

10 Q. All right. What is your understanding of that concept?

11 A. If a voter submits the ballot, and even -- usually, we
12 would get some type of directive exactly telling us, and we
13 follow that. If they submit it, even if it's an invalid
14 provisional, for instance, they still do receive voter history
15 for that election. And that was the same with absentees. They
16 still get voter history for voting.

17 Q. What is the benefits to the voter of having it show in
18 their history that they voted that year?

19 A. I would assume that it would be to show that they voted
20 so that, after two federal elections, they remain an active
21 voter.

22 Q. And before you can give a voter, let's say, credit in
23 their history for voting, you have to determine that they're an
24 eligible voter, correct?

25 A. Correct.

1 Q. And you have to know that their identity is confirmed,
2 correct?

3 A. Correct.

4 Q. But even for voters that are eligible and their identity
5 is confirmed, you might still have to reject their ballot
6 because of an error or omission on the form; is that right?

7 A. Correct.

8 MS. GENTRY: Your Honor, may I consult with counsel?

9 THE COURT: Yes, you may.

10 MS. GENTRY: Thank you.

11 (Whereupon, there was a brief interruption.)

12 MS. GENTRY: Ms. Scott, I do have a followup question.

13 BY MS. GENTRY:

14 Q. Earlier in your testimony, you referred to the hotline
15 form that's given to voters to tell them that they can call and
16 find out if their vote was counted or rejected, correct?

17 A. Correct.

18 Q. And the decision to count or reject that ballot is made
19 more than ten days after the election. Is that fair to say?

20 A. Correct.

21 Q. That's because the meeting can't be held any sooner?

22 A. Correct.

23 Q. So is it your understanding that there is only a
24 seven-day period when a voter can come in to cure a failure to
25 provide ID?

1 A. Correct.

2 Q. Even if the provisional voter calls that hotline number,
3 they won't be able to learn, within that seven-day period, that
4 there is a problem that they need to fix; is that right?

5 A. Correct.

6 Q. Okay.

7 MS. GENTRY: Thank you, Your Honor. I have no further
8 questions at this time.

9 THE COURT: All right. Ms. Gupta might have -- Are
10 you done?

11 MS. GENTRY: I'm done, Your Honor.

12 THE WITNESS: Thank you.

13 THE COURT: Why don't we take our afternoon recess.
14 Now it's 3:15. We'll stand in recess until 3:30.

15 (Recess taken from 3:15 p.m. until 3:30 p.m.)

16 - - -

17 THE COURT: Ms. Carwile, are you ready to begin your
18 cross-examination?

19 MS. CARWILE: Yes, Your Honor. Thank you.

20 THE COURT: Please begin.

21 MS. CARWILE: Would it be possible to get the blue
22 arrows removed from the screen?

23 THE CLERK: Just hit clear on the screen.

24 MS. CARWILE: Thank you.

25

DIRECT EXAMINATION

BY MS. CARWILE:

Q. Ms. Scott, I don't believe we've met. My name is Tiffany Carwile. I'm here on behalf of the defendants, the Secretary of State and State of Ohio.

How are you today?

A. Tired, but fine.

Q. I understand. I will try to be as brief as possible.

It's my understanding that you are the deputy director of the Lucas County Board of Elections; is that correct?

A. Correct.

Q. And you've been in that position since when?

A. June of 2015, previously interim from 2014 to '15.

Q. Okay. And are you associated with a political party?

A. Yes, ma'am.

Q. And what party is that?

A. I'm a Democrat.

Q. Do you hold any other positions with the Democratic Party?

A. I'm on the executive committee as well.

Q. And you mentioned you had 24 full-time employees with the Board?

A. Correct.

Q. How many seasonal employees do you anticipate hiring for the 2016 General Election?

1 A. Between -- for all operations, I can say probably
2 anywhere between 60 and 80.

3 Q. And how many registered voters are in your county?

4 A. Currently 298,000.

5 Q. And what is the Board's budget?

6 A. I don't know. Currently this year we're at
7 1.98 million.

8 Q. Okay. Thank you.

9 And I want to show you what's been marked as Plaintiffs'
10 Exhibit 989. And could you tell me what this document is?

11 A. That's an internal report we use for provisional
12 statistics. We use, as one of the means for auditing the
13 actual provisionals just in reference to the counts, the number
14 that we state we received, and then we -- the hand count. And
15 then this is directly from the registration system to assure
16 that one wasn't missed.

17 Q. And what year was this one for?

18 A. 2015 general.

19 Q. And how many provisional ballots were valid in 2015?

20 A. 1978.

21 Q. And how many were not counted?

22 A. Invalid 411.

23 Q. And could you tell me what was the most common reason
24 why a ballot was determined to be invalid?

25 A. Not registered in Ohio.

1 Q. Okay. Do you know, how many did that include?

2 A. Two hundred, I believe that's 66.

3 Q. Did that help?

4 A. Thank you. Yes.

5 Q. Do you know how many of those you were able to register
6 after the 2015 election?

7 A. No. Not the exact number, no.

8 Q. Do you know an approximate?

9 A. No. Because the not registered in Ohio, some of those
10 could be people that actually listed addresses that were not in
11 your county so, therefore, they could not be registered. We do
12 still get people that may be visiting through the state fill
13 out provisional envelopes, and those would not be able to be
14 registered so I can't tell you exactly.

15 Q. That's all right. Thank you.

16 THE COURT: Before you leave that, though, Ms. Scott,
17 I see that one wrong precinct in wrong location led to 105
18 ballots being not counted; is that right?

19 THE WITNESS: That's correct, sir.

20 THE COURT: So that's not right church/wrong pew, is
21 it?

22 THE WITNESS: No. That is the actual wrong polling
23 location as well as the wrong precinct.

24 THE COURT: For those persons, they may have been
25 voters registered in Ohio; is that right?

1 THE WITNESS: Correct.

2 THE COURT: In fact, they were voters registered in
3 Ohio; otherwise, they would have been in the column not
4 registered in Ohio; is that correct?

5 THE WITNESS: Correct.

6 THE COURT: So these 105 people were people who were
7 registered in the State of Ohio, right?

8 THE WITNESS: Correct.

9 THE COURT: But who had come to the wrong voting
10 location?

11 THE WITNESS: Correct.

12 THE COURT: Do you -- were your poll workers
13 instructed to send them to the correct location?

14 THE WITNESS: That is part of their training, yes.

15 THE COURT: Do you know whether they, in fact, sent
16 these 105 people to the correct location?

17 THE WITNESS: I cannot say definite, no.

18 THE COURT: So we don't know whether that -- well, we
19 do know. Those ballots -- those folks' ballots weren't counted
20 so apparently they would have said that they -- that despite
21 the fact that they were in the wrong voting location, they
22 refused to go elsewhere and they insisted on voting. Is that
23 that category of persons?

24 THE WITNESS: Yes. Some people that insist on going
25 to their old polling location instead of going to their new

1 polling location, or some people actually from verifying
2 previously just put -- they put different addresses; some
3 people only go to the polling locations closest to them. But
4 they are directed to go to the proper polling location when
5 they come in, whether they choose to leave or not. And if they
6 choose that they want to stay there and vote, the poll worker
7 will issue them a ballot.

8 THE COURT: Is a poll worker instructed to inform that
9 voter that that voter's ballot will not be counted because that
10 voter is voting in the wrong location?

11 THE WITNESS: Yes.

12 THE COURT: Do you know whether in these 105 instances
13 the poll worker so instructed the voter?

14 THE WITNESS: I can only say they were instructed to
15 instruct the voter.

16 THE COURT: All right.

17 Thank you, Ms. Carwile.

18 MS. CARWILE: Thank you, Your Honor.

19 BY MS. CARWILE:

20 Q. I'm going to turn to the second page of this document,
21 and what does this depict?

22 A. In the system itself when you're processing the
23 provisional, the registration system requires you to have not
24 only the reason on the front end but the issue reason. So
25 those would be that, address change, new precinct, those are

1 people that actually moved to new precincts. Name change, same
2 precinct.

3 So those are reasons on -- if we can determine why it
4 was issued based upon what they checked on the envelope itself,
5 such as name not being in the signature book, those may be
6 people that, A, for some people from the time -- it could be
7 from the time the signature book is ordered from the time that
8 they actually vote, they could be missing due to that. Or they
9 could actually be from other -- and it should be -- some of
10 those actually probably should come in other out-of-county
11 provisionals, but I can say that sometimes that's the reason
12 it's checked on there. Address change and polling, new
13 precinct, provided last four digits of their social only. On
14 some of them, those would be people that some of those people
15 had to come back in in reference to the -- after -- after
16 Election Day. And other is just that they can't find any
17 reason why that person -- why they received that ballot. I
18 didn't move, I didn't change my name. Why did the poll worker
19 have them vote a provisional?

20 If we cannot determine it, in order to still count it we
21 still give it a code, and those are other.

22 Q. So these were the reasons why the person was given a
23 provisional ballot instead of voting a regular ballot?

24 A. Correct.

25 Q. What is the number one reason that someone has to vote a

1 provisional ballot?

2 A. That they actually do move from one precinct to another.

3 Q. Okay. Thank you.

4 And why is it important for a voter to be in the correct
5 precinct?

6 A. Besides the fact that it's mandatory by the State for
7 us?

8 Well, there are local options as far as -- so say you
9 have a local issue that involves just that precinct? Of
10 course, you would want people that live in that precinct to be
11 the ones that vote on those, whether it's a liquor option, it
12 could be a school levy or something that's unique to certain
13 precincts.

14 So there are definitely things that are precinct
15 specific that of course you will want people that live within
16 those precincts to be able to vote on.

17 Q. Now, I'm not familiar with Lucas County. Are there any
18 parts of Lucas County that would have different State
19 representatives?

20 A. Yes. We have different State representatives throughout
21 the county.

22 Q. Okay. Thank you.

23 And on your prior examination you had mentioned that you
24 have poll worker training and that you had received guidelines.

25 Who did you receive guidelines for with regard to poll

1 worker training?

2 A. We received the flip chart from the Secretary of State's
3 office itself, and we use that in our training. And then we
4 also have a local guide that we use that goes over more local
5 issues in conjunction with the flip charts that we provide at
6 poll worker training.

7 Q. Okay. Great. Thank you.

8 And I want to show you what's been marked -- you saw
9 this. It's Plaintiffs' Exhibit 3454, and this was Mr. Bell's
10 ballot. Does that sound correct?

11 A. Correct.

12 Q. And you noted that the address that he gave was for a
13 U.S. postal service --

14 A. Correct.

15 Q. -- location?

16 From this ballot do you know where Mr. Bell physically
17 resides?

18 A. No.

19 Q. And do you know what precinct he should vote in?

20 A. No.

21 Q. And are you able to determine if Mr. Bell cast the
22 correct ballot?

23 A. Not from this, no.

24 Q. All right. Thank you.

25 What would you need to be able to determine whether

1 Mr. Bell cast the correct ballot?

2 A. Well, based upon the Dussel Street address itself, that
3 would be one precinct. I'm going to have to assume he doesn't
4 live in a post office box so, therefore, the address that he
5 would live at would not be that one, but we would need the
6 voter registration system to see if that was a mailing address.

7 Which I found that a lot of times when they do these
8 post office boxes, that is their true mailing address for them
9 but not their residential.

10 Q. Okay. So you would need his actual residential address?

11 A. Correct.

12 Q. In Section 4, what is that section used for?

13 A. That's for their former address. And it states if you
14 moved without updating your registration and that person, he
15 says yes.

16 Q. Okay. And was it your testimony that if they mark yes,
17 that you would send them a registration notice letter?

18 A. A registration card, yes.

19 Q. Okay. Is my understanding correct then that this form
20 can also be used to update your registration if you had not
21 previously updated it?

22 A. Yes.

23 Q. Okay. And if a voter is not registered in your county
24 and they fill out all their fields correctly -- or sorry,
25 excuse me.

1 If the voter is not registered in the State of Ohio and
2 they fill out all the fields correctly on the provisional
3 ballot envelope, what happens with regard to their
4 registration?

5 A. If they're not in the State of Ohio itself?

6 Q. Yes.

7 A. Nothing.

8 Q. Do you update their -- do you register them if they fill
9 out the provisional ballot correctly?

10 A. Oh, if they are coming into -- I thought you meant ones
11 we didn't count because they weren't in Ohio. I apologize.

12 Yes, then they would at that time be registered within
13 the state.

14 Q. All right. And why can they be registered with the
15 provisional ballot form?

16 A. Because that's currently part of the guidelines that we
17 received in the elections manual that they can.

18 Q. And prior to 2014 if they filled out just the
19 provisional affirmation form, would they have been able to
20 register to vote?

21 A. Previously we were given registration forms with the
22 actual absentee -- I mean, excuse me, with the provisional
23 ballot as well. When you voted provisionally, you got a
24 registration card along with the affirmation statement.

25 Q. Was the registration card mandatory?

1 A. They would turn that in with it. They are trained that
2 they should receive both. And at one point the actual 12B
3 actually had the registration attached to it as well.

4 Q. Okay. Do you know whether -- when it had been attached
5 to it, do you know if that section was a mandatory section for
6 that provisional ballot?

7 A. For the provisional portion of it -- well, it was a
8 carbon so it was part of the form. It was no different than
9 them filling out all of the necessary fields in reference to
10 their registration or provisional.

11 Q. Okay.

12 MS. CARWILE: May I have a moment to confer,
13 Your Honor?

14 THE COURT: Yes, you may.

15 MS. CARWILE: Nothing further, Your Honor.

16 THE COURT: Thank you, Ms. Carwile.

17 Ms. Gentry, anything further?

18 MS. GENTRY: Yes, Your Honor. I have two points to
19 cover with the witness.

20 THE COURT: All right.

21 MS. GENTRY: Actually, three, I apologize. Three
22 points.

23 THE COURT: Okay.

24 RECROSS-EXAMINATION

25 BY MS. GENTRY:

1 Q. Ms. Scott, I want to ask you about the wrong precinct
2 issue that you testified about early in your testimony with
3 Ms. Carwile, and this relates to the issue of whether a person
4 who's in the wrong location will have their ballot thrown out,
5 whereas, someone who is in the correct location but wrong
6 precinct is treated differently. So that's my preface for it.

7 Now, is it your understanding that if a person is in the
8 right church but wrong pew -- so, in other words, they're in
9 the right location but wrong precinct -- that they should be
10 directed to the right precinct?

11 MS. CARWILE: Objection, Your Honor. Beyond the scope
12 of my questioning.

13 THE COURT: I'm going to allow this because I asked
14 that question and it may -- while it wasn't within the scope of
15 your questioning, it was within the scope of mine. So if she
16 needs to clarify that point, I'm going to allow it.

17 Overruled.

18 MS. CARWILE: Thank you, Your Honor.

19 MS. GENTRY: Thank you, Your Honor.

20 THE WITNESS: Can you repeat the question for me?

21 BY MS. GENTRY:

22 Q. Sure.

23 Is it correct that if a voter is in the right location
24 but wrong precinct, then they need to be directed to the
25 correct location within -- or correct precinct within that

1 location?

2 A. They should be directed to the correct precinct, yes.

3 Q. And there's a requirement that the poll worker fill out
4 a form that shows that they directed the voters to the right
5 precinct, correct?

6 A. The 12D form, yes.

7 Q. Yes. And if that form is not filled out, there's no
8 documentation that the person was told to go to the precinct --
9 to the correct precinct, then their vote gets counted even
10 though it was in the wrong precinct, correct?

11 A. Correct. And the current manual states that the ballot
12 can be remade on issues that they are allowed to vote upon.

13 Q. Correct.

14 So, for instance, a statewide race or a statewide issue
15 they would be able to vote on regardless of what precinct they
16 actually voted in, correct?

17 A. Correct.

18 Q. And their vote in that case, the case of the correct
19 location but wrong precinct, the absence of a document allows
20 their vote to be counted because you presume that the poll
21 worker never gave them the instruction, correct?

22 A. Correct.

23 Q. Now, it's a different situation for a person who is in
24 the wrong location, correct?

25 A. Correct.

1 Q. There's no form that the poll worker has to fill out to
2 show that they told the voter to go to their correct precinct
3 in a different location, correct?

4 A. Correct.

5 Q. So the voter who's in the wrong location to begin with
6 does not have the same protections that a voter who's in the
7 right location has with respect to wrong precinct issues,
8 correct?

9 A. There is currently no process for that, correct.

10 Q. But the only difference between the two groups of people
11 is that one person made it to the right building and the other
12 person made it to a different building, correct?

13 A. I would assume, yes.

14 Q. All right. We've shown you the ballot for David Bell,
15 and you'll recall he was -- his vote was not counted because he
16 gave an address of 427 West Dussel, which is the post office;
17 correct?

18 A. Correct.

19 Q. His ballot was not rejected for not being a registered
20 voter, correct?

21 A. Correct.

22 Q. So is it fair to infer that his registration card has a
23 different address other than the post office address?

24 A. I would assume, yes.

25 Q. And in your answers before you actually suggested that

1 perhaps he was writing down his mailing address instead of his
2 residence address.

3 A. Correct.

4 Q. Do voters sometimes do that, they accidentally write
5 down their mailing address instead of their residence address?

6 A. I would assume that only because I know that's a post
7 office so I would assume that that's why he did.

8 Q. And more than one person has done that, correct?

9 A. Correct.

10 Q. The registration address where Mr. Bell is actually
11 registered could be in the same precinct as the post office,
12 couldn't it?

13 A. I would have no idea.

14 Q. You'd have to check, correct?

15 A. Right.

16 Q. But it could be in the same precinct?

17 A. It could be.

18 Q. And so he might have voted in the correct precinct even
19 though he wrote down his mailing address, correct?

20 A. It's possible, yes.

21 Q. But you don't have any processes to check to determine
22 what address he's registered at and whether the precinct was
23 correct?

24 A. Well, the process would be -- I'm going to assume that
25 it's not even in the correct precinct because I can say this:

1 If you have people that are issued provisional ballots
2 when they possibly should not have had one because they moved
3 within that same precinct, that is one of the codes we do use,
4 that they moved within their same precinct.

5 Q. Well, he was rejected two years in a row, correct?

6 A. Correct. I'm going to assume that his is not in that
7 precinct, I would assume, because that's also a code you could
8 use as well. His, besides it being a residential -- besides it
9 being a commercial, if it's the same precinct, if I list an
10 address, old address and new address and it's the same
11 precinct, first of all, our question is why did that person
12 vote provisionally anyway. So that is a coding that we
13 normally do try to use because that's a training issue that we
14 try to focus on, that people are being asked to vote
15 provisionally when they should not have to because they moved
16 within the same precinct if they had all the other information
17 they needed. So I would probably assume that his address is
18 not within that one.

19 Q. You have no evidence as to whether he moved, though,
20 correct?

21 A. I have no evidence of either.

22 Q. And you have -- and you really have no evidence as to
23 where his registration address is other than what's on the card
24 in his file, correct?

25 A. I have no -- I'm sorry?

1 Q. Okay. You don't know where his registration address is
2 unless you look at his registration card.

3 A. Correct. Correct.

4 Q. When he came in and verbally gave his address to the
5 worker -- well, strike that. I think I'm getting confused.

6 You said that the poll worker looks at his -- the
7 address he writes down and determines what precinct that
8 address is, correct?

9 A. Correct.

10 Q. In order to determine what ballot to give him?

11 A. Correct.

12 Q. Are your poll workers trained not to accept addresses
13 like 427 West Dussel, which is the post office address?

14 A. No.

15 Q. Why not?

16 A. They're looking it up in the street and road guide. In
17 the street and road guide there are addresses within that range
18 that may be residential addresses. So, no, they're not trained
19 to tell -- look at that and say you're giving me a residential
20 address, no, they're not.

21 Q. So the street guide contains both commercial addresses,
22 government addresses and residential addresses?

23 A. It contains all addresses within the GIS database. So
24 there could be an address that is residential and next to it
25 could be commercial. Or, like we discussed previously, up and

1 down, upper and lower. So it could very well be some addresses
2 that are both, and the poll worker would not know that. No,
3 they would not.

4 Q. You anticipated my question. So the poll worker might
5 think it's a valid address because it's in the guide, but later
6 on it will be determined that it's not valid?

7 A. Correct.

8 Q. And there's nothing in the street guide that alerts the
9 poll worker that certain addresses are not valid for voting
10 purposes?

11 A. No.

12 Q. Finally, Ms. Carwile asked you about using the
13 provisional ballot form as it's been modified to register
14 people to vote.

15 Do you recall that?

16 A. Yes.

17 Q. Isn't it true that the form could request that
18 information from voters but not throw out their vote just
19 because they didn't fill out a field?

20 A. Is it true that it can be used that way? I'm --

21 Q. Yes. Isn't it true that the form could stay exactly the
22 way it is but Boards could still count votes if they've
23 identified that the voter is who they say they are and that
24 they're eligible to vote?

25 A. If -- if that was -- if that's the directive we were

1 given, yes.

2 Q. Yeah. There's no reason you can think of why that
3 couldn't be the law if the law were changed, correct?

4 A. Correct.

5 MS. GENTRY: All right. Thank you, Your Honor. No
6 further questions.

7 THE COURT: All right. Ms. Carwile?

8 MS. CARWILE: Just very briefly, Your Honor.

9 THE COURT: All right.

10 REDIRECT EXAMINATION

11 BY MS. CARWILE:

12 Q. I apologize for keeping you. I'm going to make this
13 really brief.

14 This is Plaintiffs' Exhibit 3454. You've seen it. What
15 does -- in Section 4, what does that checkmark or the X tell
16 you?

17 A. He said he moved and he did not update his address.

18 Q. So that would be evidence that Mr. Bell actually had
19 moved in 2014?

20 A. Correct.

21 Q. And do you know what his residence is based on this
22 form?

23 A. No.

24 MS. CARWILE: Okay. Thank you.

25 Nothing further.

1 THE COURT: Ms. Scott, thank you very much, ma'am.
2 You may be excused.

3 THE WITNESS: Thank you.

4 THE COURT: Your next witness?

5 MR. CHANDRA: So, Your Honor, Senator Turner is on her
6 way back from Ballot Board. She texted a few minutes ago so
7 she should be here momentarily. We can either continue with
8 her, or we have another witness waiting from Warren County. I
9 do believe it will be moments because it was probably 7 or 8
10 minutes ago she said she was on her way back.

11 THE COURT: All right. We'll wait for Senator Turner
12 then because we already have Mr. Davis' testimony that will be
13 truncated so there's no need to have that many open spaces.

14 So we'll resume when Ms. Turner arrives.

15 MR. CHANDRA: Our understanding, Your Honor, is that
16 we have to close business at 5:00 today; is that correct?

17 THE COURT: Yes, because I have class.

18 The only other day we need to talk about, I believe, is
19 Monday. I have something at 2:30, but I'm trying to reschedule
20 that. I'll have -- I should have something definitive on that
21 by tomorrow. And what may have to happen is I may have to
22 address that business so we might have to take about an hour to
23 an hour-and-a-half Monday afternoon, and then we can come back.
24 And on Monday and Wednesday of next week we can work until 5:00
25 o'clock because I, once again, have class.

1 MR. CHANDRA: Okay. Thank you, Your Honor. I will go
2 see what the status is with Senator Turner.

3 (Thereupon, a recess was taken.)

4 THE COURT: Please proceed.

5 MS. RICHARDSON: Thank you, Your Honor.

6 - - -

7 NINA TURNER,

8 HAVING BEEN PREVIOUSLY DULY SWORN, FURTHER TESTIFIED AS
9 FOLLOWS:

10 CROSS-EXAMINATION

11 (Continued)

12 BY MS. RICHARDSON:

13 Q. Good afternoon, Senator Turner.

14 A. Good afternoon.

15 Q. Before we broke we were taking a look at Plaintiffs'
16 Exhibit 1286. And you testified earlier that this is proponent
17 testimony that was offered by Steve Cuckler.

18 Do you recall that?

19 A. I do.

20 Q. And I believe right as we were closing I had asked you
21 whether one of the things that Mr. Cuckler is talking about in
22 this testimony is the issue of a statewide mailing; is that
23 correct?

24 A. Yes.

25 Q. And based on your review of Mr. Cuckler's testimony, is

1 it your understanding that Mr. Cuckler was recommending that
2 the State -- the Secretary of State be the individual
3 responsible for sending out absentee ballot applications?

4 A. Yes.

5 Q. And if you'll take a look at the seventh bullet down
6 where it begins in Delaware County?

7 A. Uh-huh.

8 Q. And it states: In Delaware County, we have three cities
9 that straddle into Franklin County, Columbus, Dublin and
10 Westerville. Did I read that correctly?

11 A. Yes.

12 Q. And it states: In Delaware County we have 13 school
13 districts and education centers that straddle multiple
14 counties, such as Marion, Licking, Morrow and Union Counties as
15 well.

16 Did I read that correctly?

17 A. Yes.

18 Q. Thank you, Senator.

19 And it states in the next bullet point: If there is not
20 a uniform and consistent process of sending absentee ballot
21 applications to voters, it creates unequal access to the ballot
22 for voters who live in the same governmental jurisdiction and
23 causes confusion with voters.

24 Did I read that correctly?

25 A. Yes.

1 Q. He provides an example. He states in the next bullet
2 point that there are streets in Columbus, Dublin and
3 Westerville where one --

4 MR. CHANDRA: Your Honor, objection as to the previous
5 portion as to relevance. We're not challenging that. And also
6 the same continuing hearsay objection.

7 THE COURT: Overruled.

8 MS. RICHARDSON: Thank you, Your Honor.

9 BY MS. RICHARDSON:

10 Q. And in this testimony Mr. Cuckler states: As an
11 example, that there are streets in Columbus, Dublin and
12 Westerville where one side is in Delaware, yet the other side
13 is in Franklin.

14 And he states: If Franklin County sends out absentee
15 applications and due to budget constraints Delaware County does
16 not, you have a situation where neighbors are treated
17 differently and voters who happen to live in larger counties
18 with sizeable financial resources have more access to a ballot
19 to vote on the very same issues and candidates as their
20 neighbors who happen to live in smaller counties.

21 Did I read that correctly?

22 A. I can see the first part, and I assume you read the
23 second part correctly.

24 Q. Thank you, Senator. I apologize.

25 A. That's okay.

1 Thank you. Yes.

2 Q. And now that you can actually see the document, did I
3 read that correctly?

4 A. Yes.

5 Q. Thank you.

6 And in the last bullet point it states: Surveys sent
7 out by Senators Seitz and Smith to election officials in all 88
8 counties found that the overwhelming majority of counties
9 support -- and it moves on to the next page -- the Secretary of
10 State being responsible for sending out absentee ballot
11 applications.

12 MR. CHANDRA: Objection; double hearsay, Your Honor.

13 THE COURT: Overruled.

14 MS. RICHARDSON: Thank you, Your Honor.

15 BY MS. RICHARDSON:

16 Q. Did I read that bullet point correctly?

17 A. Yes.

18 Q. And, finally, it states: In my opinion, we need more
19 clarity, uniformity and consistency in Ohio's election laws.
20 SB 205 is a positive step in that direction.

21 And did I read that correctly?

22 A. Yes.

23 Q. Thank you, Senator.

24 And I believe you mentioned that with Senate Bills 205
25 and 216, there was vigorous debate. Do I recall that correctly

1 from your testimony?

2 A. Yes.

3 Q. And some of that debate may be reflected in the formal
4 records from the senate; is that correct?

5 A. Yes, on the senate floor.

6 Q. And there may have also been conversations and debates
7 that took place outside of the context of the formal record; is
8 that fair?

9 A. That's fair.

10 Q. Senator, Mr. Chandra asked you some questions about a
11 billboard that was erected in your community. Do you recall
12 that?

13 A. I do.

14 Q. That billboard was not put up by the General Assembly,
15 was it?

16 A. No.

17 Q. And it was not put up by any -- any of the defendants in
18 this case, correct?

19 A. Not to my knowledge.

20 Q. You were asked a series of questions on your direct
21 about preventing fraud. Do you recall that?

22 A. Preventing fraud? Okay.

23 Q. Let me clarify my question.

24 I believe you were asked some questions about whether
25 any of the sponsors or proponents of Senate Bills 205 and 216

1 mention fraud as a specific reason for the bills.

2 A. Yes.

3 Q. And you would agree that preventing fraud is not the
4 only potential interest an election law can serve, correct?

5 MR. CHANDRA: Objection.

6 THE COURT: Sustained. Rephrase your question.

7 MS. RICHARDSON: Thank you, Your Honor.

8 BY MS. RICHARDSON:

9 Q. Senator, are there a variety of different important
10 interests that can be taken into account in determining whether
11 a regulation with respect to an election should be passed?

12 MR. CHANDRA: Objection.

13 THE COURT: Overruled.

14 THE WITNESS: Yes.

15 BY MS. RICHARDSON:

16 Q. You were also asked a series of questions about
17 provisional ballots. Do you recall that?

18 A. Yes.

19 Q. And I believe you referenced some statistics from the
20 EAC. Do you recall that?

21 A. Yes.

22 Q. Do you remember which year you were referring to when
23 you referenced those statistics regarding provisional ballots
24 in Ohio?

25 A. No. I'm not sure of the year of the EAC's report.

1 Q. Are you aware that in 2012 the EAC reported that 26
2 states counted less than half of their provisional ballots?

3 A. No.

4 Q. Are you aware that in 2012 Ohio exceeded 80 percent of
5 the provisional ballots counted?

6 MR. CHANDRA: Your Honor, objection to this line of
7 questioning.

8 THE COURT: Overruled.

9 THE WITNESS: No.

10 BY MS. RICHARDSON:

11 Q. And are you aware that in 2014 Ohio counted over
12 90 percent of provisional ballots?

13 A. No.

14 Q. And that it was one of only five states to have
15 acceptance rates that high?

16 A. No.

17 Q. And in 2014 Senate Bills 205 and 216 were in place; is
18 that correct?

19 A. Yes.

20 Q. Senator Turner, I asked you a little bit earlier about
21 the Ohio Democratic Party's Twitter account. Do you recall
22 that?

23 A. Yes.

24 Q. And you testified that @OhioDEMS is the Twitter handle
25 for the Ohio Democratic Party, correct?

1 A. Yes.

2 Q. I'm going to show you what has been premarked as
3 Defendants' Exhibit 63. Are you familiar with this?

4 A. I had not seen this Tweet when it went out. I'm not
5 sure when it went out.

6 Q. And based on the Twitter handle at the top of the page,
7 you can tell this is a Twitter that went out from the Ohio
8 Democratic Party, correct?

9 A. Correct.

10 Q. And it states: Early voting is easy and convenient and
11 open to every registered Ohio voter, correct?

12 A. Correct.

13 Q. Senator Turner, you have never been a member of a Board
14 of Elections in the State of Ohio, have you?

15 A. No.

16 Q. And you've never been employed by a Board of Elections
17 in the State of Ohio, correct?

18 A. Correct.

19 Q. And in 2014 you ran for the position of Ohio Secretary
20 of State, correct?

21 A. Correct.

22 Q. And Jon Husted was your opponent in that race, correct?

23 A. Yes.

24 MS. RICHARDSON: Your Honor, may I confer?

25 THE COURT: Yes, you may.

1 MS. RICHARDSON: No further questions, Your Honor.

2 Thank you, Senator.

3 THE COURT: Thank you, Ms. Richardson.

4 Mr. Chandra, any redirect?

5 MR. CHANDRA: Yes, Your Honor.

6 REDIRECT EXAMINATION

7 BY MR. CHANDRA:

8 Q. Senator Turner, I'm going to show you one by one the
9 various exhibits that Ms. Richardson was showing you, and I'll
10 start with Plaintiffs' Exhibit 1308.

11 Is this the sponsor testimony from Senator Bill Seitz
12 for Senate Bill 216?

13 A. Yes.

14 Q. Now, I know that Ms. Richardson directed you to certain
15 portions of it, but I would like you to please skim the
16 document again.

17 Let me know when you're done with the first page, and
18 I'll turn to the second page.

19 A. Okay. Okay.

20 Q. Okay. So I just moved it up. Did you get a chance to
21 skim the whole document?

22 A. I skimmed, yes.

23 Q. Okay. And if you need me to put it back up, let me
24 know.

25 A. Okay.

1 Q. My question is having reviewed the document again and
2 the approximately seven supposed reasons justifying Senate Bill
3 216, do you see anything in those reasons that would cause you
4 to conclude that disenfranchising a voter for failure to fill
5 out the five fields completely and correctly is justifiable?

6 MS. RICHARDSON: Objection.

7 THE COURT: Basis?

8 MS. RICHARDSON: Leading.

9 THE COURT: Overruled.

10 MS. RICHARDSON: Thank you, Your Honor.

11 THE WITNESS: No.

12 BY MR. CHANDRA:

13 Q. Do you see anything in Plaintiffs' Exhibit 1308 that
14 causes you to conclude that disallowing poll workers from
15 assisting voters in completing provisional ballot forms is
16 justifiable?

17 A. No.

18 Q. Okay. So I would like to move you now to Plaintiffs'
19 Exhibit 1437. This was the interested party testimony
20 regarding Senate Bill 216 by Ken Terry of the Ohio Association
21 of Election Officials. And if you could please just take a
22 moment to review the testimony, let me know when you need me to
23 move it up and move to the next page.

24 A. You can move it up. Okay.

25 Q. Senator Turner, do you see anything in Plaintiffs'

1 Exhibit 1437, Mr. Terry's testimony of interested party Ohio
2 Association of Elected Officials, that suggests to you that
3 disenfranchising a voter for failure to completely and
4 accurately fill out the five fields on the provisional ballot
5 affirmation form is justifiable?

6 A. No.

7 MS. RICHARDSON: Objection.

8 THE COURT: Basis?

9 MS. RICHARDSON: Leading.

10 THE COURT: Sustained. Rephrase, Mr. Chandra.

11 MS. RICHARDSON: Thank you, Your Honor.

12 BY MR. CHANDRA:

13 Q. Do you see anything in Plaintiffs' Exhibit 1437 that
14 causes you to rethink your earlier testimony in which you
15 stated that disenfranchising voters for failure to fill out the
16 form is unjustifiable?

17 A. No.

18 Q. Okay. Specifically, do you see -- did you have an
19 opportunity to read the section of Plaintiffs' Exhibit 1437
20 that talked about using the provisional ballot affirmation form
21 as a means of updating voter registration?

22 A. Yes.

23 Q. Okay. Do you see any connection between the need to --
24 or the desirability of using that form to update a voter's
25 registration with the need to -- or any need to disenfranchise

1 the voter while doing so?

2 A. No.

3 Q. What about with respect to assistance by a poll worker
4 in completing the form, does anything in Plaintiffs' Exhibit
5 1437 cause you to change the view you expressed that
6 disenfranchising the voter is not acceptable?

7 MS. RICHARDSON: Objection.

8 THE COURT: Basis?

9 MS. RICHARDSON: Continuing to lead.

10 THE COURT: Sustained. Rephrase, Mr. Chandra.

11 MS. RICHARDSON: Thank you, Your Honor.

12 MR. CHANDRA: I'm sorry, could I have the question
13 read back to me, and I'll try to reformulate it?

14 (Question read back.)

15 BY MR. CHANDRA:

16 Q. That's a bad question anyway, so thank you.

17 Does anything in Plaintiffs' Exhibit 1437, Mr. Terry's
18 testimony, cause you to believe that prohibiting poll workers
19 from assisting voters in filling out provisional ballot
20 affirmation forms is justifiable?

21 A. No.

22 Q. Okay. I'd like to now show you Plaintiffs' Exhibit
23 1294, which is the interested party testimony on behalf of the
24 Ohio Association of Election Officials of Aaron Ockerman.

25 Do you remember seeing this exhibit earlier?

1 A. Yes.

2 Q. And Ms. Ryan showed it to you. Is there anything --
3 first of all, let's make sure you've had a chance to skim
4 through it again.

5 A. Okay.

6 Q. Last page.

7 A. Okay.

8 Q. Okay. Senator Turner, does any of the reasoning offered
9 by Mr. Ockerman in Plaintiffs' Exhibit 1294 on behalf of the
10 Ohio Association of Election Officials cause you to believe
11 that disenfranchising voters for failure to completely and
12 accurately fill out the provisional ballot affirmation form is
13 justifiable?

14 A. No.

15 MS. RICHARDSON: Objection.

16 THE COURT: Basis?

17 MS. RICHARDSON: Leading.

18 THE COURT: Sustained.

19 MS. RICHARDSON: Thank you, Your Honor.

20 THE COURT: Rephrase, Mr. Chandra.

21 BY MR. CHANDRA:

22 Q. Does anything about Plaintiffs' Exhibit 1294, Senator
23 Turner, influence your thinking as expressed in your earlier
24 testimony about the justifiability of disenfranchising voters
25 for failure to fill out the provisional ballot affirmation form

1 completely and accurately?

2 A. No.

3 Q. I'm going to show you Plaintiffs' Exhibit 1438,
4 interested party testimony of Karla Herron with the Ohio
5 Association of Election Officials regarding Senate Bill 205 on
6 absentee ballots. And, if you could, take whatever time you
7 need to revisit this exhibit.

8 MS. RICHARDSON: Objection, Your Honor.

9 THE COURT: Basis?

10 MS. RICHARDSON: Outside the scope of my cross. This
11 is not one we went over during cross-examination.

12 THE COURT: Sustained.

13 MS. RICHARDSON: Thank you, Your Honor.

14 MR. CHANDRA: I'll withdraw it.

15 BY MR. CHANDRA:

16 Q. Okay. I will show you then Plaintiffs' Exhibit 1287,
17 and this was the document that was State Senator William Coley,
18 II's, sponsor testimony regarding Senate Bill 205. Do you
19 recall Ms. Richardson showing you this document?

20 A. Yes.

21 Q. And if you could please revisit it to ensure you're
22 familiar with it.

23 A. Okay.

24 Q. Now, Ms. Richardson was asking you from this document
25 questions about the proffered rationale of uniformity.

1 Do you recall that?

2 A. Yes.

3 Q. Is there anything about Senator Coley's rationale as
4 expressed in Plaintiffs' Exhibit 1287 that causes you to
5 reconsider your earlier testimony about the justifiability of
6 disenfranchising voters who fail to completely fill out their
7 absentee ballot forms that accompany the absentee ballots being
8 returned?

9 A. No.

10 MS. RICHARDSON: Objection, Your Honor. Same leading
11 question.

12 THE COURT: I'm going to overrule it.

13 MS. RICHARDSON: Thank you, Your Honor.

14 MR. CHANDRA: I'm sorry, I didn't hear the Court's
15 ruling.

16 THE COURT: Overruled.

17 MR. CHANDRA: Thank you.

18 BY MR. CHANDRA:

19 Q. And is there anything about Senator Coley's testimony as
20 shown to you in Plaintiffs' Exhibit 1287 that causes you to
21 believe that prohibiting poll workers from assisting voters in
22 filling out the form accompanying absentee ballots is
23 justifiable?

24 A. No.

25 Q. Plaintiffs' Exhibit 1286 was proponent testimony from

1 Steve Cuckler, C-U-C-K-L-E-R. I'll note for the record that
2 this document is highlighted.

3 MS. RICHARDSON: Mr. Chandra, do you want to switch
4 out? You should have -- those are my notes. You should have
5 the -- there should be -- excuse me, Your Honor.

6 BY MR. CHANDRA:

7 Q. So this is Mr. Cuckler's proponent testimony. Do you
8 recall Ms. Richardson showing you this?

9 A. Yes.

10 Q. And there are a number of bullet points on the page?

11 A. Yes.

12 Q. Have you had a chance to review it?

13 A. Yes.

14 Q. Is there anything about anything that Mr. Cuckler
15 testified to that causes you to rethink your earlier testimony
16 about the justifiability of disenfranchising a voter who does
17 not fill out the absentee ballot form completely and
18 accurately?

19 A. No.

20 Q. And one of the things that Mr. Cuckler talked about in
21 this testimony that Ms. Richardson showed you was the example
22 she went over concerning voters on different sides of the
23 street in the same community and the mailing of absentee forms
24 to them -- or ballot applications to them.

25 Do you recall that discussion?

1 A. Yes.

2 Q. Okay. And what is your position with regard to whether
3 or not counties -- let me rephrase that.

4 What is your position with regard to the alleged need
5 for uniformity across Ohio with the Secretary of State in
6 control sending out absentee ballot applications to voters?

7 A. Well, I have grave concerns about that and expressed
8 that in the senate. Uniformity for government is not equity
9 for the voter. So if you take a county as large as Cuyahoga
10 County and you compare large counties to the smallest county,
11 larger counties -- or Cuyahoga County has about 38 times the
12 population of the smallest county.

13 And so to say this -- Mr. Cuckler's testimony is really
14 all about -- from my reading, about the administration of
15 elections and not about what the center focus should be, which
16 is to make voting easy and accessible for the voters.

17 Q. So what are -- in your view, what are the differences
18 between larger counties like Cuyahoga County and smaller
19 counties with regard to absentee ballot applications?

20 A. Well, population is number one. And just to, you know,
21 remind -- just thinking about 2004, you know, what happened in
22 Ohio when we became the laughing stock of the nation because
23 lines were long and people were waiting for hours and hours.
24 And the General Assembly did correct that in 2006; I wasn't a
25 member at that time. But one of the reasons for the mailing

1 out of absentee ballot applications is to ensure as much as one
2 can that we don't have a repeat of 2004.

3 And so for counties like Cuyahoga County, it is
4 important that we can mail out those absentee ballot
5 applications. That is what Cuyahoga County had been doing
6 before the General Assembly took away that authority. And so I
7 had constituents of mine in 2014, for example, who were
8 confused because they were accustomed to getting the absentee
9 ballot application from the Cuyahoga County Board of Elections,
10 but instead they got it from the Secretary of State. His name
11 was all over the envelopes, and some people in my district
12 thought it was advertisement for his reelection.

13 Q. And what did you come to understand about that reaction?

14 A. Some voters --

15 MS. RICHARDSON: Objection.

16 THE COURT: Yes, Ms. Richardson?

17 MS. RICHARDSON: Vague question, calls for speculation
18 and calls for hearsay.

19 THE COURT: Overruled. You may answer.

20 MS. RICHARDSON: Thank you, Your Honor.

21 THE WITNESS: Thank you, Your Honor.

22 Some of my voters -- and these were elderly
23 African-American voters -- threw out the absentee ballot
24 application, quite frankly, because they were accustomed to
25 getting that from the Boards of Election instead of the

1 Secretary of State.

2 BY MR. CHANDRA:

3 Q. Finally, I would like to show you what has been marked
4 as Defendants' Exhibit 63. This is the Tweet from the Ohio
5 Democratic Party. Could you please read the first couple of
6 lines before the URL into the record?

7 A. Yes. Early voting is easy and convenient and open to
8 every registered Ohio voter. Get more information.

9 And then the URL for Ohio DEMS is listed.

10 Q. Okay. Just from your understanding as, you know, a
11 sometime Democratic Party official, what is your understanding
12 of what the purpose of such a Tweet is?

13 A. The purpose is to get people to vote. And in a Tweet
14 with 140 characters, it certainly would not be feasible or
15 appropriate for the Democratic Party to go into a big debate
16 while you're trying to get voters to come out to vote about the
17 fact that you have less opportunity to vote, so that Tweet was
18 just trying to get people out to vote.

19 MR. CHANDRA: Okay. I have no further questions,
20 Your Honor.

21 MS. RICHARDSON: No questions, Your Honor. Thank you.

22 THE COURT: Senator, thank you very much. You may be
23 excused.

24 THE WITNESS: Thank you, Your Honor.

25 MR. CHANDRA: We'll call our next witness, Your Honor.

1 THE COURT: Your next witness, Mr. Chandra, or
2 Ms. Gentry?

3 MS. GENTRY: Yes, Your Honor. We call Brian Sleeth to
4 the stand.

5 - - -

6 BRIAN SLEETH

7 AFTER HAVING BEEN FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

8 CROSS-EXAMINATION

9 BY MS. GENTRY:

10 Q. Good afternoon, Mr. Sleeth.

11 A. Good afternoon.

12 Q. Could you please state and spell your name for the
13 record?

14 A. Brian, B-R-I-A-N, Sleeth, S-L-E-E-T-H.

15 Q. You are currently the director of the Warren County
16 Board of Elections?

17 A. Yes, I am.

18 Q. You've been in that position for two-and-a-half years?

19 A. Yes, that's correct.

20 Q. Previously you were the deputy director of the Warren
21 County Board of Elections?

22 A. Yes.

23 Q. And you were in that position for a year?

24 A. Yes.

25 Q. How many full-time staff do you have?

1 A. Eight.

2 Q. And what generally are your job responsibilities with
3 regard to absentee and provisional ballots?

4 A. My job?

5 Q. Yes.

6 A. Overseeing the whole entire process from the incoming
7 ballots coming in, getting them processed, and the same day
8 absentee voting in office. We also make sure those are all
9 accounted for every day. We tally them up and make sure
10 they're all accounted for.

11 Q. I'm going to ask you about the process of provisional
12 ballots being filled out at the polls on Election Day. Okay?

13 A. Uh-huh.

14 Q. Now, the voters must fill out all five fields, being
15 printed name, address, date of birth, I.D. and signature,
16 correct?

17 A. Yes.

18 Q. Does the printed name have to be printed or can it be
19 cursive?

20 A. We accept either.

21 Q. My understanding is that in your jurisdiction poll
22 workers are trained to check the box on the form that states
23 that an I.D. was provided to them; is that correct?

24 A. That's correct.

25 Q. Why do you have poll workers check that box on the

1 provisional ballot affirmation form?

2 A. They're required to -- if the voter does not have a
3 driver's license or does not provide the last four digits of
4 their social, they're allowed the option to show the poll
5 worker any of those alternative forms of I.D., and the poll
6 workers acknowledge that and it gets checked on the form.

7 Q. And it gets checked by the poll worker?

8 A. Yes. I'm sure that the voters have checked it in the
9 past, but I'm not there at the polls and we assume that they
10 are doing that.

11 Q. You train your poll workers to check the box?

12 A. Yes.

13 Q. Are poll workers also trained to review the provisional
14 ballot form for completeness before the voter leaves the
15 polling place?

16 A. Yes. Before they're issued a ballot.

17 Q. This is at the polling place?

18 A. Yes.

19 Q. Describe that process to me.

20 A. Well, when it's -- when we get to the point where we
21 decide if they're a provisional voter or not, whatever the
22 reasons may be, the poll worker sends the voter off with the
23 form, the provisional ballot envelope, and has them complete it
24 and then bring it back to the table. And then they preview it
25 just to make sure that all the necessary fields are filled in.

1 And then they are ordered to proceed after that in giving the
2 person the correct ballot.

3 Q. Now, how do they know which precinct ballot to give to
4 the voter?

5 A. Currently right now we use the electronic poll book, and
6 you would look up the voter's current address to determine
7 where they're supposed to be voting.

8 Q. And is that address given to the poll worker verbally by
9 the voter, or do they look at the form?

10 A. Either way.

11 Q. I'm going to ask you about nursing home voters.

12 MS. GENTRY: And, Your Honor, this might be a good
13 time to read the stipulation into the record.

14 THE COURT: All right.

15 MS. CARWILE: It's my understanding that the parties
16 have agreed to stipulate to the admission of Exhibits P386
17 through P443 and also P2371.

18 THE COURT: Mr. Conover?

19 MR. CONOVER: That's correct, Your Honor.

20 THE COURT: The Court will admit P386 through 443 and
21 P2371.

22 MS. GENTRY: Thank you, Your Honor.

23 THE COURT: Please continue, Ms. Gentry.

24 MS. GENTRY: Thank you, sir.

25 BY MS. GENTRY:

1 Q. Mr. Sleeth, I'm showing you what's been marked as
2 Plaintiffs' Exhibit 391. This is a provisional ballot that was
3 rejected for not having a date of birth. Do you see that?

4 A. Yes.

5 Q. There is a label with the name Otterbein Lebanon and
6 then an address that's placed near the street address portion
7 of the form. Do you see that?

8 A. Yes, I do.

9 Q. What is Otterbein Lebanon?

10 A. It's a senior living facility, a senior facility.

11 Q. Is that another name for a nursing home?

12 A. Yes, a nursing home.

13 Q. Why is that label placed on this form?

14 A. Most of the voters there in nursing homes struggle to
15 write all that information out. And so that we're able to read
16 that when it comes back to the Board of Elections office, we
17 populate that field with the address of the facility. The
18 facility uses the same address for the whole entire place. All
19 the residents have that same address.

20 Q. So does that mean that all the of the residents of the
21 nursing home are registered to vote using the nursing home as
22 their address?

23 A. Yes, that's correct.

24 Q. In this case the label is placed over the date of birth
25 field. Do you see that?

1 A. Yes. It looks like it's just placed a little bit higher
2 than we usually place it.

3 Q. And that's done by the Board?

4 A. It's done by our officials that go out to the polls. We
5 have -- we hire a bipartisan team that goes out to the nursing
6 homes and helps with the voting process, and one of those
7 individuals must have placed the label higher than usual.

8 Q. And by obscuring the date of birth field, arguably it
9 made it difficult to see it and fill it in; is that fair?

10 A. I mean, it still says date of birth to the left there
11 and we'll -- just half the first box is covered there by the
12 label.

13 Q. All right. I believe you testified in your deposition
14 that the Board of Elections goes to every length to make sure
15 that the provisional ballot envelope is filled out for nursing
16 home voters. Do you recall that?

17 A. Yes, that's correct.

18 Q. Why is that?

19 A. I mean, our goal at the Board of Elections is to make
20 sure that, you know, we don't have to go out there multiple
21 times. And to make sure that they do provide all the required
22 information on the envelope, we try to assist the voters as
23 best we can.

24 Q. And is it your experience that nursing home voters in
25 particular require more assistance than the regular voter?

1 A. Absolutely.

2 Q. Do you have an understanding as to why?

3 A. Just because of their age. You know, sometimes -- you
4 know, this form is not -- you know, it's pretty small, hard to
5 read in some spots. You know, it's pretty -- we do take
6 magnifying glasses out to our nursing homes that magnifies the
7 whole page. But, you know, it's hard for, you know, a general
8 person in the facility to fill out this form unassisted.

9 Q. Do you also rely on the nursing home facility to give
10 you some information, such as date of birth?

11 A. Yeah. Initially, when we go out to the facilities, we
12 reach out to the -- it's usually the activities coordinator who
13 helps us out. We reach out to them first to find out which
14 residents would like to participate in the voting process, and
15 we provide them a list of everybody that's registered at that
16 location. And anybody that's not on that list we ask the
17 nursing home to, you know, gather that information so we can --
18 when we go out there, we can help get them registered to vote.

19 Q. All right. Thank you, Mr. Sleeth.

20 Now, I want to turn to the procedure that you follow
21 when you determine whether to count a provisional ballot.

22 It's my understanding that you follow the seven steps
23 that are laid out in the directive; is that correct?

24 A. That's correct.

25 Q. And it's your understanding that the year of birth in

1 the date of birth field must be correct; is that right?

2 A. That's correct.

3 Q. So if the voter gets the month and day right but writes
4 down the current year accidentally, that vote will be rejected?

5 A. I mean, I would have to review the directive myself. I
6 don't have the whole thing memorized. But any of those type of
7 things are presented to our bipartisan board, and they would
8 vote on that individually to reject or accept that based on the
9 directive.

10 Q. In your mind is there an issue as to whether the -- you
11 can confirm that the voter is over the age of 18?

12 A. Can I confirm that?

13 Q. Is that an issue in your mind as to why the year needs
14 to be correct?

15 A. Yeah. I mean, if it has the current year -- you know, I
16 mean, if it was 2014 and it said 2014, then you would, I guess,
17 question if they were eligible to even cast a ballot.

18 But that's why we have them vote the provisional ballot
19 so it allows us to further investigate that.

20 Q. If they're a registered voter, then they must be over
21 the age of 18, correct?

22 A. Uh-huh.

23 Q. Is that a yes?

24 A. Yes.

25 Q. Is it your understanding that the directive allows the

1 Board of Elections to count a ballot that has -- an absentee or
2 provisional ballot that has a wrong date of birth if they find
3 that all of the other information on the form is correct?

4 A. Without having the directive in front of me, I don't
5 think I could answer that.

6 Q. Okay. You have been present when the Board has reviewed
7 provisional ballots, correct?

8 A. Thousands, yes.

9 Q. Okay. And do you recall a time when the Board ever
10 voted to count provisional ballots or absentee ballots that had
11 a defective date of birth?

12 A. I don't recall that, no.

13 Q. What does the Board -- what do you do or your staff do
14 if you have a social security number, let's say, written down
15 that doesn't match anything in your database because the voter
16 never provided their social security number before? What do
17 you do?

18 A. Yeah, if the field is blank in our database and they
19 provide us a social security number, we update our records with
20 the last four digits of their social security number.

21 Q. You presume it's correct?

22 A. Yes.

23 Q. And you count the ballot?

24 A. Yes.

25 Q. You have dealt with at least one homeless voter; is that

1 correct?

2 A. Yes.

3 Q. Can you describe that for the Court?

4 A. Yeah. Several years ago when I was working, we got a
5 phone call from a poll worker who had someone there that
6 claimed that they were homeless and wanted to know how to
7 proceed from there on determining where they should be voting.
8 So in talking to the poll worker -- and I talked to the voter;
9 it was a male. I don't have any other information besides
10 that. But we found that he was living outdoors and he gave me
11 an address so I used that address to determine which precinct
12 and which ballot to give him, and then that address is now in
13 our voter registration system.

14 Q. And the address that he gave you corresponded roughly to
15 the location where he was living outdoors?

16 A. Yes. Luckily it was in the middle of a precinct so
17 there was no gray area there. We knew exactly where it was.

18 Q. And that was an unusual circumstance; is that right?

19 A. It was the first time that's happened to me. I mean,
20 you know, you have people that live in hotels and stuff and use
21 that address, but this is the first one that I had experienced
22 in my four years of being in various roles at the Board of
23 Elections office that I've experienced that.

24 Q. It's correct that provisional ballots are presented to
25 the Board to make a final determination as to whether to count

1 them, true?

2 A. Yes, that's correct.

3 Q. However, you do not present absentee ballots to the
4 Board to decide whether or not to count them, correct?

5 A. That's correct.

6 Q. And that's because if the staff determines that there's
7 a problem with an absentee ballot, you send out a Form 11S,
8 correct?

9 A. Yes, that's correct.

10 Q. If there's no Form 11S that's returned, you
11 automatically reject the ballot?

12 A. Yes. We report the numbers to the Board. But if it's
13 deficient, we do let the Board see those. But, again, it
14 hasn't been voted on since I've been there.

15 Q. And finally, Mr. Sleeth, I want to ask about the process
16 that happens when an absentee voter appears to vote early at
17 the Board. It's my understanding that the voter first fills
18 out an application and it's checked against the database,
19 correct?

20 A. An application -- we hand them both the application and
21 the envelope that their ballot will be sealed in. We hand them
22 both at the same time.

23 Q. And they fill out both at the same time?

24 A. That's correct.

25 Q. And both of them are checked at the same time?

1 A. Yes.

2 Q. And only after the I.D. envelope is confirmed to be
3 correct is the voter handed a ballot, true?

4 A. That's correct.

5 Q. So there's no risk that an in-person voter is going to
6 be disenfranchised because of a mistake on their I.D. envelope,
7 correct?

8 A. That's correct. We would catch it on the spot.

9 MS. GENTRY: Your Honor, may I have a moment to confer
10 with counsel?

11 THE COURT: Yes, you may.

12 MS. GENTRY: Thank you.

13 BY MS. GENTRY:

14 Q. Just a couple of questions, Mr. Sleeth.

15 When the Board rejects a provisional ballot because of a
16 failure to fill out one of the five fields, does the Board
17 provide any notice to the voter that they have rejected their
18 ballot for that reason?

19 A. No, they do not. But we follow up with each voter that
20 had an incomplete form. Since we can't register the voter by
21 that, we do follow up with a problem letter and give them an
22 application to register correctly so they're registered in time
23 for the next election.

24 Q. And that's even for voters who are already registered
25 but you don't have a valid address, let's say?

1 A. Yes. Yeah, we attempt to reach them.

2 Q. So it's possible to reach out and ask them to register
3 with a form. You don't need to just provide the provisional
4 ballot form?

5 A. No, we do that after the election, we can do that.

6 Q. If you recall the ballot I showed you with the nursing
7 home that was rejected for lack of date of birth, why wasn't
8 that date of birth filled in by someone at the nursing home?
9 Why didn't your bipartisan team make sure that happened?

10 A. You know, we're not really sure about that. I reviewed
11 all of our procedures after that to make sure that, you know,
12 they do get a date of birth from the voter in the future so we
13 don't have anything like that.

14 Q. And, finally, Mr. Sleeth, if -- not finally, I'm sorry.

15 In that case where a bipartisan team went out and met
16 with the voter, was it possible to identify that the voter was
17 an eligible voter even without their date of birth?

18 A. No, not at that time. Not when we were out there with a
19 provisional.

20 When we go out to the nursing homes originally, we get
21 an application from the voter so we can go back to our office
22 and verify that in our voter registration system. And then to
23 vote provisional, usually if a nursing home resident votes
24 provisional it's we've got to the nursing home and they've --
25 all of a sudden it was somebody not on our list. And there's

1 no way to run back to the Board of Elections office to verify
2 the information, we just don't have the manpower to do that, so
3 a provisional is the default there for a situation like that,
4 and I assume that's what happened there.

5 Q. And, finally, if there is a provisional ballot that has
6 everything filled out but one field, let's say the date of
7 birth but you can verify the name, address, the I.D. and the
8 signature, is it -- do you think that it's fair to reject the
9 ballot simply because of the lack of date of birth?

10 A. I mean, you know, as a Board of Election office we have
11 to follow the directives. And it is a required field and it
12 says on the envelope that this is a required field to be filled
13 in for your ballot to count so, you know, I just have to go by
14 what the rules are today.

15 Q. I understand that you have to follow the law, but do you
16 believe that it's fair?

17 A. I don't think I've -- I try --

18 MR. CONOVER: Objection, Your Honor.

19 THE COURT: Overruled.

20 MR. CONOVER: Thank you.

21 THE WITNESS: At the Board of Elections office I try
22 not to bring my feelings into anything there. We try to work
23 as a bipartisan team and try not to make our own opinions. You
24 know, we -- we run our office in pretty much direct order from
25 the Secretary of State's office and try not to -- again, you

1 know, everybody has their own political opinions, but we try to
2 check that at the door when we go into the building. And I've
3 always tried to maintain that since the day I started there.

4 BY MS. GENTRY:

5 Q. And I understand that on the job you want to maintain
6 your neutrality. But as you sit here today asked the question
7 directly, do you think it's fair?

8 MR. CONOVER: Objection, Your Honor.

9 THE COURT: Overruled.

10 THE WITNESS: I think with a birth date missing,
11 personally I think if the birth date is missing, then there's
12 no way to tell if that is, indeed, the voter to be able to
13 verify that key piece of information. I mean, we use birth
14 dates every day in our office to tell if this person is a
15 father, son. You know, it's hard to tell. Sometimes people
16 with the same name it's hard to tell -- we have to use a birth
17 date to determine if it's a junior or a senior and stuff like
18 that. So, you know, as an administrator, I feel it's very
19 important to have a date of birth to verify if that is, indeed,
20 the voter.

21 BY MS. GENTRY:

22 Q. Even if you have a signature and a social security
23 number that verifies that it's the voter?

24 A. I mean, if you have the social security number, I guess
25 it would, you know, further lead you to believe that that is

1 the case. So, you know, in that particular case, I would think
2 that, you know, that one might be able to count if the law
3 allowed that.

4 MS. GENTRY: All right. Thank you.

5 THE COURT: Thank you, Ms. Gentry.

6 Unless you have only a 5 minute cross-examination,
7 Mr. Conover, we're going to resume Mr. Sleeth's
8 cross-examination at 8:30.

9 MR. CONOVER: My only concern would be that he would
10 be driving back up from near Cincinnati in the morning so I
11 will do my darndest to get it done as quickly as possible.

12 THE COURT: Please proceed.

13 MR. CONOVER: Thank you, Your Honor.

14 DIRECT EXAMINATION

15 BY MR. CONOVER:

16 Q. Good afternoon, Mr. Sleeth.

17 A. Good afternoon.

18 Q. I know that we've previously met, as I'm a voter of
19 Warren County. But, for the record, my name is Brodi Conover,
20 and in this case I represent the defendants, the Secretary of
21 State and the State of Ohio.

22 Are you a member of a political party, Mr. Sleeth?

23 A. Yes.

24 Q. What party is that?

25 A. Democratic.

1 Q. And do you hold any positions in the county party?

2 A. In the county party? No, I do not.

3 Q. What is the Ohio Association of Election Officials?

4 A. What is that?

5 Q. Yes.

6 A. I'm sorry. It's an organization that consists of 12
7 Republicans, 12 Democrats, and I belong on a legislative
8 committee there.

9 MR. CHANDRA: I apologize. I'm not able to hear.
10 Would you mind speaking into the microphone? Thank you.

11 BY MR. CONOVER:

12 Q. And I believe you said there are eight full-time
13 employees at the Board?

14 A. Yes, that's correct.

15 Q. Do you hire any part-time or seasonal employees?

16 A. Yes.

17 Q. How many?

18 A. This election, I believe we had about 14 people working
19 for us.

20 Q. And what does -- what do those 14 people do?

21 A. They work in our absentee department. I usually -- I do
22 not use our full-time staff for absentee, we need them in the
23 office since, you know, we're a small office so we depend on
24 our repeat people that come back and work for us. Each
25 election we depend on them to work back in the absentee

1 department and go out to nursing homes.

2 Q. And do you hire -- I think you said nursing homes. Do
3 you hire people specifically for the nursing home operation?

4 A. Usually. But we did -- some of those workers that want
5 extra hours, we will have them work in our office as well.

6 Q. And how many precinct election officials does the Board
7 hire?

8 A. We have approximately 688 to staff all the polling
9 locations, and we hire about 25 to 30 extra.

10 Q. And can you just briefly describe the training that
11 those precinct election officials receive leading up to
12 Election Day?

13 A. Yes. They all receive approximately two-and-a-half to
14 three hour training, and I do all the training personally. My
15 deputy director handles the provisional section, but we do
16 dedicate about 20 minutes of just training on provisional
17 ballots.

18 Q. And I think you described that process for Ms. Gentry,
19 but I want to follow back up on it in a little bit more detail.

20 So what specifically are the poll workers instructed to
21 do when a provisional voter comes up to the precinct table?

22 A. They're to make sure that they are in the correct
23 precinct by looking up their address, make sure that they're at
24 the correct table, not just at the correct location, so that
25 they get the correct ballot.

1 Q. And why is it important to look that voter up by their
2 address?

3 A. To determine which ballot that they should receive.
4 They could maybe be in a different school district, the
5 precinct across the table, so we want to make sure they're
6 voting on the correct things.

7 Q. And are the precinct election officials provided with a
8 checklist for provisional voters?

9 A. Yes, they are.

10 Q. And can you describe that checklist?

11 A. I devised a checklist to give -- because it is a
12 confusing process sometimes for our workers who only work twice
13 a year -- and we developed just a simple checklist. Obviously,
14 it's not required, but we ask them to fill it out just to
15 ensure that they have looked up -- it gives them some reminders
16 that they looked up the address, they're making sure that
17 they're reviewing all sections of the front of the provisional
18 envelope, the six sections there to make sure that everything
19 is filled out before giving them the ballot.

20 Q. So when the Board begins to process a provisional
21 affirmation statement on the back end after Election Day, what
22 pieces of information does the Board use to verify the identity
23 of the voter? How do you look the voter up?

24 A. Oh, yeah, we use the statewide voter database, and we
25 look up the voter there to see if they're registered in another

1 county if they're not already registered in ours. I mean, we
2 obviously start with our county first if they've just moved
3 within the county. But if they're not registered here, we do
4 reach outside and go in all 88 counties -- or 87 counties we
5 can search in.

6 Q. And when you look the voters up in the statewide
7 database, what pieces of information do you use to look them
8 up?

9 A. We use their last name, date of birth, and depending on
10 the I.D. that they provided us. But we search several
11 different ways. That's the first one. We can't find them
12 there, we do some different wild card searches.

13 Q. And why do you use those pieces of identification
14 information, the name, I.D., and then I believe you said date
15 of birth?

16 A. That's how the database is designed to search by those
17 fields, and it's easier to -- you know, the more information
18 you put in there, the most likely you are going to find the
19 voter.

20 Q. And what is a wild card search?

21 A. It's just when you take off their first name and maybe
22 just search by date of birth just to see if -- you know, look
23 at all the registered voters with that date of birth and then
24 maybe the first initial and last initial of their name. That's
25 putting in the least amount of information.

1 Q. And I believe that you said that the Board sends
2 election officials out to nursing homes, but are there other
3 areas or other locations in the county that the Board might
4 send multiple ballots to?

5 A. Just in general from absentee ballot applications?

6 Q. Uh-huh.

7 A. I mean, I would say they would go to, you know, your
8 large apartment complexes or any other senior facility that's
9 not a nursing home, like the rehab centers and places like
10 that.

11 Q. And how does the Board verify the identity of those
12 voters?

13 A. When the voter registers to vote there, we send an
14 acknowledgment card in the mail to them. And if it does not
15 come back return to sender from the post office, we -- you
16 know, they're good to go to vote.

17 Q. And how can a voter track the status of their absentee
18 ballot?

19 A. It's -- we post that on our website, and the voter can
20 look up their own name to see the status of their absentee
21 ballot.

22 Q. Can they call into the Board?

23 A. Absolutely.

24 Q. And do voters call into the Board?

25 A. All the time.

1 MR. CONOVER: I'm almost done, Your Honor, Your Honor,
2 just very quickly.

3 BY MR. CONOVER:

4 Q. And you may have mentioned this on your cross, but I
5 just wanted to verify. What purpose does a provisional ballot
6 have for a non-registered voter?

7 A. It will get them registered for the next election if
8 filled out completely and correctly.

9 Q. And why is that? Or how is that?

10 A. How is -- I mean, they're not -- they're not registered
11 so we use that as a voter registration card, and then we'll
12 mail them an acknowledgment card to that address to confirm
13 that it is a valid address, and then they will be registered.

14 Q. Is that because all the required information to register
15 is on the provisional affirmation?

16 A. Yes.

17 Q. And have you registered voters as a result of them
18 filling out a provisional affirmation statement?

19 A. Yes.

20 Q. And do you know if any of those voters have voted in
21 subsequent elections?

22 A. That data could be found by asking our vendor who
23 manages our voter registration system.

24 Q. Is it your understanding that that may have occurred?

25 A. Yes.

1 Q. And then, finally, kind of just on the Board's review,
2 what information does the Board staff provide to the actual
3 Board when they're reviewing provisional ballots?

4 A. They provide copies of -- on the ones in question, they
5 provide copies of the screenshots of the searches that they
6 have done on the statewide voter registration database that
7 show that they did search it and it came back empty.

8 Q. And why does the Board staff do that?

9 A. Just so there's -- so the Board members have no doubt
10 that we did our best to search for that voter in the statewide
11 database and they were not found so we provide the copies to
12 the Board.

13 Q. Does the Board staff review individual ballots or ballot
14 forms?

15 A. Yes.

16 Q. And what's the most common reason for a provisional
17 ballot being rejected?

18 A. They're not registered in the state.

19 MR. CONOVER: Just one quick moment, Your Honor.

20 Nothing further.

21 THE COURT: I take it that you have nothing further as
22 well, Ms. Gentry?

23 MS. GENTRY: That's correct, Your Honor.

24 THE COURT: Okay. Mr. Sleeth, thank you very much,
25 sir. You can be excused.

1 THE WITNESS: Thank you.

2 THE COURT: Have a safe trip back.

3 THE WITNESS: Thank you.

4 THE COURT: Ms. Gentry, we will begin tomorrow at 8:30
5 with whatever witnesses you have.

6 MS. GENTRY: Thank you, Your Honor.

7 THE COURT: Anything further from the Defense --
8 Ms. Gentry, is there anything further from the Plaintiff?

9 MS. GENTRY: Your Honor, just in planning witnesses
10 for tomorrow, can we plan on a full day for tomorrow?

11 THE COURT: You can plan on a full day for every day
12 except Monday at this point.

13 MS. GENTRY: Thank you, Your Honor. Nothing further.

14 THE COURT: And then Monday we'll just have a gap, but
15 we'll still have a full day.

16 Ms. Richardson?

17 MS. RICHARDSON: Nothing from the Defense, Your Honor.

18 THE COURT: Thank you.

19 MS. RICHARDSON: Have a good evening.

20 THE COURT: Everyone have a good evening.

21 (Proceedings concluded at 5:06 p.m.)

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C E R T I F I C A T E

We do hereby certify that the foregoing is a true and correct transcript of the proceedings before the Honorable Algenon L. Marbley, Judge, in the United States District Court, Southern District of Ohio, Eastern Division, on the date indicated, reported by us in stenotypy and transcribed by us or under our supervision.

s/Denise Errett, FCRR
Denise Errett, FCRR
Official Federal Court Reporter

s/Darla J. Coulter, RMR
Darla J. Coulter, RMR

DATE: March 28, 2016